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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1966

No. 491

BOARD OF SUPERVISORS OF SUFFOLK COUNTY, NEW YORK and TOWN OF SOUTHAMPTON, TOWN OF EAST HAMPTON, TOWN OF RIVERHEAD, TOWN OF SOUTHOLD and TOWN OF SHELTER ISLAND; ROBERT T. CAMERON, individually and as Supervisor of the Town of Southampton; EDWARD V. ECKER, individually and as Supervisor of the Town of East Hampton; ROBERT B. VOJVODA, individually and as Supervisor of the Town of Riverhead; LESTER M. ALBERTSON, individually and as Supervisor of the Town of Southold, and EVANS K. GRIFFING, individually and as Supervisor of the Town of Shelter Island,

*Appellants,*

*v.*

I. WILLIAM BIANCHI, JR., and QUENTIN B. SAMMIS, and TOWN OF HUNTINGTON,

*Appellees.*

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK

## JURISDICTIONAL STATEMENT

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1966

BOARD OF SUPERVISORS OF SUFFOLK COUNTY, NEW YORK and TOWN OF SOUTHAMPTON, TOWN OF EAST HAMPTON, TOWN OF RIVERHEAD, TOWN OF SOUTHOLD and TOWN OF SHELTER ISLAND; ROBERT T. CAMERON, individually and as Supervisor of the Town of Southampton; EDWARD V. ECKER, individually and as Supervisor of the Town of East Hampton; ROBERT B. VOJVODA, individually and as Supervisor of the Town of Riverhead; LESTER M. ALBERTSON, individually and as Supervisor of the Town of Southold, and EVANS K. GRIFFING, individually and as Supervisor of the Town of Shelter Island,

*Appellants,*

*v.*

I. WILLIAM BIANCHI, JR., and QUENTIN B. SAMMIS, and TOWN OF HUNTINGTON,

*Appellees.*

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK

## JURISDICTIONAL STATEMENT

This is an appeal by the Board of Supervisors of Suffolk County, New York and the Town of Southampton, et al., from an Opinion and Order of June 15, 1966, issued by the District Court for the Eastern District of New York, sitting

as a three-judge statutory court especially invoked by the provisions of 28 U. S. C. section 2281.

This Statement is submitted by Appellants to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial federal question is presented.

## Opinions Below

The June 15, 1966 Opinion of the District Court of the United States for the Eastern District of New York, not yet reported, is attached to this Statement as Appendix A, *infra*, at Page 1a.

The June 15, 1966 Order of this court is attached to this Statement as Appendix A, *infra*, at Page 11a.

The supplemental Opinion and Order of August 4, 1966 of the District Court along with the dissenting Opinion of Dooling, D. J., also unreported, is attached to this Statement as Appendix A, *infra*, at Page 13a.

The February 1, 1966 Opinion of the United States District Court of the Eastern District is reported at 238 F. Supp. 997 and is attached to this Statement as Appendix B, *infra*, at Page 20a.

The Order of the District Court dated March 3, 1965 is attached to this Statement as Appendix B, *infra* at Page 34a.

The Opinion of the District Court, Brauchhausen, J. is reported at 217 F. Supp. 166, and is attached to this Statement as Appendix C, *infra*, at Page 36a.

## Jurisdiction

This suit was brought under 42 U. S. C., sections 1983 and 1988; under 28 U. S. C. sections 1343(3) and 1343(4); and under 28 U. S. C. sections 2201-2202 seeking a declaratory judgment as well as injunctive relief to restrain Appellant, Board of Supervisors of Suffolk County, New York, from exercising any county function or power on the general grounds that the Suffolk County Charter, approved by the electorate January 6, 1958, and the County Law, were unconstitutional. The three-judge District Court was ordered by Judge Bruchhausen September 20, 1963. On February 1, 1965, the three-judge Court issued its Opinion. On March 3, 1965, the three-judge Court issued its Order. An appeal from this Order was taken to this Court and dismissed for lack of jurisdiction, 382 U. S. 15 (1965). The statutory court having retained jurisdiction, the appellees renewed their action and the result was the Opinion and final Order of June 15, 1966. Notices of Appeal to this Court were filed by the appellants on June 30, 1966. An Opinion and Order supplementing the Order of June 15, 1966 was filed by the statutory court on August 4, 1966.

The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by 28 U. S. C. section 1253. The following representative cases sustain the jurisdiction of the Supreme Court to review the judgment on appeal in this case: *Reynolds* v. *Sims*, 377 U. S. 533, 12 L. Ed. 2d 506, 84 Sup. Ct. 1362; *Lucas* v. *Colorado General Assembly*, 377 U. S. 713, 12 L. Ed. 2d 632, 84 Sup. Ct. 1472; *Roman* v. *Sincock*, 377 U. S. 695, 12 L. Ed. 2d 620, 84 Sup. Ct. 1462; *Maryland Committee for Fair Representation* v. *Tawes*, 377 U. S. 656, 12 L. Ed. 2d 595, 84 Sup. Ct. 1442; *WMCA, Inc.* v. *Lomenzo*, 377 U. S. 633, 12 L. Ed. 2d 568, 84 Sup. Ct. 1418; *Davis* v. *Mann*, 377 U. S. 678, 12 L. Ed. 2d 609, 84 Sup. Ct. 1453.

## Questions Presented

The combined Notices of Appeal to the Supreme Court present these questions:

1. Is the legislative conduct of a municipal form of government delegated by the State of New York and the individual voter representation therein a matter of federal constitutional jurisdiction or significance?

2. Do apportionment standards which apply to congressional representation and state legislatures also apply to counties and other local municipalities and agencies exercising delegated legislative functions?

3. Do the constitutional provisions of Amendment 10 and Article 4, Section 4 bar the relief herein ordered?

4. Can a municipality, possessed of delegated legislative functions from the state, exercise those functions under a weighted voting system of government, or does such a weighted vote system violate the equal protection clause of Amendment 14?

5. Did the District Court have authority here to declare a state legislative enactment to be unconstitutional under the State Constitution?

6. Assuming federal jurisdiction, is mere voter or population disparity sufficient for the Court to order reapportionment or must the record sustain "invidious discrimination" by the actual conduct of the legislative body?

## Statement of the Case

The issues on the merits raised in this appeal are of far-reaching importance to every local subdivision of state, county and municipal government throughout the United States.

The proceeding below was first brought under the statutes cited above by two residents of the Towns of Brookhaven and Huntington, County of Suffolk, State of New York, allegedly on behalf of themselves and all other taxpayers and voters of the said county in the said state against the Appellant, Board of Supervisors, which is the governing body of the county.

The complaint charged among other things, that the Suffolk County Charter approved by the voters on January 6, 1958, as well as the County Law of the State of New York, were unconstitutional because (1) votes cast by supervisors in their function as the county governing body did not fairly reflect population proportion in the county, and (2) the votes of the inhabitants of the more populated areas of the towns are not accorded equal weight as compared to those of the representatives from the less populated towns. The complaint alleged further that upon the basis of the undisputed facts the constitution of the present legislative body for the county is not representative of the voters of the county under the Fourteenth Amendment to the Constitution of the United States. Appellant, Board of Supervisors, first filed a motion to dismiss the complaint on the ground, among others, that there was no substantial federal question involved in the manner of electing local officials at the town and county level. The United States District Court for the Eastern District of New York, in *Bianchi* v. *Griffing*, 217 F. Supp. 166 (1963) denied Appellants' motion without prejudice to renewal before a three-judge United States District Court. Such a court was convened, and after a motion to dismiss was heard, filed, on February 1, 1965, an Opinion denying the motion to dis-

miss the complaint and also denying an injunction prayed for by the Appellees. As heretofore stated, an appeal to this Court by the Appellant, Board of Supervisors, was dismissed for lack of jurisdiction, 382 U. S. 15 (1965).

The statutory court having retained jurisdiction, the plaintiffs commenced further proceedings consistent with the District Court's March 3, 1965 Order. The result of those new proceedings was the June 15, 1966 Opinion and final Order.

Subsequent to the Order of June 15, 1966, the additional Appellants sought leave to intervene and for a stay of the Order of June 15, 1966, since Appellant, Board of Supervisors, was authorized to appeal only and not to seek a stay. The statutory court granted, on June 28, 1966, the application to intervene and on a 2 to 1 division (Dooling, D.J. dissenting) stayed the order for 7 days to allow an application to be made to this Court for a stay. Such application was made to this Court and was denied by Justice Black on July 2, 1966.

A supplemental Opinion and Order dated August 4, 1966, made after further hearing, was filed to implement the Order of June 15, 1966 as therein provided in paragraph "4".

The orders of June 15, 1966 and August 4, 1966 imposed upon the Board of Supervisors of Suffolk County immediate and continuing weighted voting and charged such weighted Board with the duty of creating a new plan of government for submission to the County electorate.

Thereafter following the supplemental Order of August 4, 1966, the Board of Supervisors of Suffolk County on August 22, 1966 adopted by weighted voting, subject to additional hearing requirements of the Suffolk County Charter, a Local Law providing for submission to the voters of the County in November 1966 of a single, permanent weighted vote plan of county government.

## The Questions Are Substantial

The first 4 questions are the most serious. They encompass the issues: (a) Whether and to what extent the federal judiciary shall take unto itself the judicial supervision of the various local municipalities of the 50 state governments, and (b) whether substantial segments of the population shall be effectively disenfranchised from the conduct of the affairs of such municipalities by virtue of the institution of weighted vote systems of government under the guise of compliance with the "'one person one vote' apothegm of *Gray* v. *Sanders*" (*Moody* v. *Flowers*, USDC M. Ala., June 10, 1966).

The Three Judge District Court here declined to "slough off" its responsibility in this field to the state legislature or to the state courts (decision of June 15, 1966).

### (a) Federal Jurisdiction and Standards

If this responsibility exists, it extends to every town, county, city, fire district, school district, water district, sewer district ad infinitum of each state. Jurisdiction to convene a three-man district court will extend throughout the federal judicial circuits at the suit of each person conceiving himself to be aggrieved by the composition of the legislative body of such municipal subdivisions of the State.

As stated, this appeal presents the vitally important question of whether the Equal Protection Clause of the Fourteenth Amendment in respect to reapportionment extends to the lowest level of local government. This appeal further presents the important question of whether Federal District Courts under U. S. Code Title 28, section 2281 et seq. should assume jurisdiction upon a complaint such as the one involved in this case and the record presented.

It is well settled, and the Appellants do not deny that the Supreme Court of the United States has issued unequivocal rulings to the effect that as to Congressional Districts within the boundaries of states and state legisla-

tures themselves, reapportionment must take place so as not to disenfranchise large bodies of voters. *Baker* v. *Carr*, 369 U. S. 186 (1962); *Reynolds* v. *Sims*, 377 U. S. 533 (1964); *Gray* v. *Sanders*, 372 U. S. 368 (1962). These decisions were based upon the Court's reading of the Fourteenth Amendment to the U. S. Constitution under which no person may be denied the equal protection of the law with respect to his vote. Does the Fourteenth Amendment reach beyond the reapportionment of state legislatures?

We believe that the appeal presents serious questions of substance as to whether the District Court in its interpretation of the applicable decisions of the Supreme Court was in error in taking jurisdiction over this question, as to its apparent holding on the Fourteenth Amendment point, and whether the federal judiciary properly should concern itself with local elections, and finally, a proper interpretation of the federal judiciary's role in local municipal elections. We further submit that neither the Federal Declaratory Judgment Act nor the Civil Rights Act cited by Appellees as grounds for its suit appropriately confer jurisdiction under the facts of this case. Accordingly, the questions are of ultimate and vital national public importance and the Supreme Court of the United States should take jurisdiction of this appeal and reverse and dismiss the suit on the ground that no substantial federal question is involved.

In *Moody* v. *Flowers, supra,* a case on appeal to this Court, a divided three-judge District Court in Alabama determined that federal jurisdiction did not extend to the government of Huston and Randolph Counties. In dismissing the complaint the majority, nevertheless, expressed the need for juicial resolution by the Supreme Court, although acknowledging the applicability of Chief Justice Warren's statement in *Reynolds* v. *Sims*, 377 U. S. 533, 575 (1964):

> "Political subdivisions of States—counties, cities, or whatever—never were and never have been considered as sovereign entities. Rather, they have been traditionally regarded as subordinate govern-

> mental instrumentalities created by the State to assist in the carrying out of state governmental functions. As stated by the Court in Hunter *v.* City of Pittsburgh, 207 U. S. 161, 178, these governmental units are 'created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them,' and the 'number, nature and duration of the powers conferred upon [them] . . . and the territory over which they shall be exercised rests in the absolute discretion of the State.' "

The conflict between District Courts should be resolved by this Court.

Article 4 Section 4 of the Constitution provides "The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the Executive (when the legislature cannot be convened) against domestic violence."

In general, the enforcement of this constitutional guarantee is not for the courts. It is primarily a legislative power residing in Congress. *Highland Farms Dairy* v. *Agnew,* 300 U. S. 608 (1937 (Mr. Justice Cardozo). In *Highland* the Court held that distribution of power by the state among its governmental organs is commonly if not always, a question for the state. "How power shall be distributed by a state among its governmental organs is commonly, if not always, a question for the state itself. The statute is not a denial of a republican form of government. Even if it were, the enforcement of that guarantee, according to the federal doctrine, is for Congress, not the courts." *Pacific Telephone Company* v. *Oregon,* 233 U. S. 118 (1912).

Since the power thus exercised is a Congressional rather than a judicial power, the next question to be decided is what the purpose of the constitutional guarantee may be. In *Eckerson* v. *Des Moines,* 115 N. W. 177, 137 Iowa 452 (1908) the Court stated that "The purpose of the Federal Constitution was to provide a form of government, republican in character, for the states as a united whole, and not to

control the systems of local government, and therefore, a statute is valid providing a form of municipal government which ignores the features of executive, legislative, and judicial departments and commits the functions of government to a single body." To the same effect are *State ex rel Porterie* v. *Smith,* 1936, 166 So. 72, 184 La. 283; *Walling North Central* v. *Texas,* 359 S. W. 2d 546 (1962); *State* v. *Hearn,* 155 P. 1066, 59 Or. 227 (1911).

In *Reynolds* v. *Sims, supra,* Chief Justice Warren discussed claims based on an alleged violation of this constitutional clause as relating to reapportionment and stated that while such claim does not present a justiciable controversy it does not prevent the Court from determining the issue of equal protection of voter rights in electing state legislatures which are guaranteed to be representational. *Baker* v. *Carr, supra,* makes it clear that in reapportionment cases the court does not regard this constitutional clause as a valid basis for violation of state constitutions by state legislatures. It asserts the constitutional power of the Fourteenth Amendment but in no way sets aside the argument that Article 4, section 4, which guarantees a republican form of government leaves to the states the determination of what Mr. Justice Cardozo called the distribution by a state of power among its governmental organizations. The Supreme Court has never said the Constitution guarantees counties a republican form of government. If there is no requirement for representational local government, there is no federal constitutional voting right to which the equal protection amendment can attach.

It is our position that a state legislature, such as the New York Legislature, that is legally apportioned according to a population basis and whose composition meets the tests of the Equal Protection Clause has the sole constitutional authority to delegate its legislative functions, reserved to it by the Tenth Amendment. The federal courts ought not and cannot do more than to order reapportionment of that body, the legislature, which exercises all powers reserved to the state by the Tenth Amendment,

including the exercise or delegation of such reserved powers. If such is the case, why should a different result obtain merely because the New York Legislature saw fit to grant a measure of home rule to Suffolk County? For example, no one could successfully contend that the Fourteenth Amendment of the United States Constitution—bearing in mind the powers reserved by the Tenth Amendment of the Constitution—requires that a properly apportioned state legislature must delegate powers to its political subdivisions in any particular manner. For further example, a properly apportioned New York State Legislature could constitutionally provide that such powers —legislative, administrative, fiscal—as it saw fit to give the County of Suffolk, might be exercised by an appointive official or body. Leaving the matter of proper county apportionment or control over local forms of government to the case by case federal court determination makes each federal courtroom a political science workshop on legislation and public administration.

It is also submitted that the criteria established by the Supreme Court for the equal protection of voting rights at congressional and state levels have no significance for local county, town, village, school, water, fire and other utility districts or governmental subdivisions. The state legislature may permit local considerations to mold the form of local government. The form of local government need not be pure democracy or representational so long as due process prevails.

(b) Weighted Voting

The decision of June 15, 1966, instantaneously reapportioned the County of Suffolk on a weighted vote plan and directed that a permanent re-apportionment plan be submitted to the voters of Suffolk County at the General Election to be held in November 1966. Using the weighted vote, the Board of Supervisors has provided for the submission to the voters in November 1966 of a permanent weighted

vote plan, a copy of which local law is set forth in the Appendix hereto at page 53a.

In the decision of June 15, 1966, Judge Moore expressed doubt as to the validity of weighted voting as expressed in *WMCA, Inc.* v. *Lomenzo,* 238 F. Supp. 916 (U. S. D. C. S. D. N. Y. 1965). In the decision of August 4, 1966, he expresses the opinion that straight weighted voting is unconstitutional relying on the recent opinion of the Court of Appeals, State of New York, July 11, 1966, in *Graham* v. *Board of Supervisors, Erie County,* wherein said Court of Appeals stated in part: ". . . weighted voting has inherent defects, . . .". Judge Dooling dissented fully from that part of the decision of August 4, 1966, which found that any form of weighted voting might be constitutional.

It has been observed in *Reynolds* v. *Sims, supra,* (377 U. S. at pp. 567-8):

> "* * * the weight of a citizen's vote cannot be made to depend on where he lives. . . . A citizen, a qualified voter, is no more nor no less so because he lives in the city or on the farm. * * *"

And in *Gray* v. *Sanders,* it was stated (372 U. S. at p. 380):

> "The only weighting of votes sanctioned by the Constitution concerns matters of representation, such as the allocation of Senators irrespective of population and the use of the electoral college in the choice of a President. * * *"

Nevertheless, despite this judicial comment on weighted voting, the now weighted Board of Supervisors, under judicial mandate, has chosen to permit the voters of Suffolk County to approve or disapprove a plan calling only for permanent weighted voting even though it is somewhat dispersed by the addition of extra supervisors.

Thus, we find that the District Court has declared the system of government prevailing in Suffolk County prior

to June 15, 1966, to be unconstitutional: it has, by judicial fiat, supplanted the government with a straight weighted vote plan of government to be in existence for 18 months and has by August 4, 1966, unanimously concluded that such a form of government is also unconstitutional.

Amendment XIV of the Constitution provides for the equal protection of the laws to all the citizens of the States. Under the present and proposed weighted vote plans, the residents of the five eastern towns of Suffolk County, and perhaps a majority of voters in the entire county, find themselves, insofar as county government is concerned, in a legislative "straight jacket". *Baker* v. *Carr*, 369 U. S. 186, 193.

Approximately 90,000 people now have 14 votes in the county legislative body out of a possible 134. These same 90,000 people have no opportunity to nominate nor to vote for the supervisors of the five western towns who will continue to control, numerically, the legislative functions of the County Board of Supervisors. Further, in the more populous areas, there exists the inherent defects of weighted voting caused by the formation of election districts based not upon equal population, but artificial town boundaries which recognizes that Suffolk County is really a confederation of towns.

If, in fact, "invidious discrimination" existed prior to June 15, 1966, the remedy imposed has merely transferred the invidious discrimination from one group of persons to another group.

Assuming, once again, an initial violation of the equal protection laws of Amendment XIV necessitating Federal judicial intervention in the affairs of the County of Suffolk, such judicial intervention should not be permitted and the status quo should not be changed unless the remedy provides for a form of government which also does not violate the equal protection laws of Amendment XIV.

The record here is a splendid example of why the Federal judiciary should not assume jurisdiction over the com-

plicated affairs of local governments, but rather, should honor the provisions of Amendment X and accord to the State Legislatures and the State Courts the sole right to redress these affairs.

(c) Other Considerations

We think that Question 5, *supra*, has been heretofore answered by the decisions of this court in *L & N Railroad Co.* v. *Garrett*, 231 U. S. 301, 34 Sup. Ct. 48, 58 L. Ed. 229. It should be noted that the complaint contains no claim that the Constitution of the State of New York has been volated by Section 203 of the Suffolk County Charter. Nor did the litigants discuss the applicability of the Constitution of the State of New York to the statute involved. The court's decision of June 15, 1966, does not discuss in any way the Constitution of the State of New York and yet the order of June 15, 1966, recites that the statute is unconstitutional under the Constitution of the State of New York. It is the position of the appellants that unless the equal protection clause of Amendment XIV applies to this statute and has been violated, the Three-Judge District Court was powerless to declare the statute unconstitutional under the State Constitution.

As to question 6, *supra*, no record was made in this case except for the pleadings, the oral arguments of counsel and the apparent judicial notice taken by the court of population figures. No evidence was submitted showing the history of local government or that any "stranglehold" existed on the County Board of Supervisors—and, in fact, the statute clearly provides for a tie-breaking vote by the County Executive who is elected at large from the County. Neither was any evidence taken or submitted to indicate or establish that any of the towns having larger population did not receive from the county their respective fair share of return of County funds. The record below fails to support any possible claim of either racial discrimination or outrageous circumstances, either of which conceivably might be sufficient to invoke the broad equity jurisdiction of the

Federal Judiciary under Amendment XIV. Absent such a record, the court below should have recognized the adequate remedies at law of the plaintiffs to proceed in the courts of New York State or to seek redress through their elected representatives in the State Legislature.

## Conclusion

It is submitted that the Supreme Court has jurisdiction, and it should hear this appeal and reverse the Court below. The questions herein are new, substantial and important to the continued vitality and existence of local subdivisions of state government. It should also be reversed to maintain a proper balance between issues to be litigated in State or Federal Courts.

Respectfully submitted,

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## Appendix A

1. Decision of Three Judge Statutory Court dated June 15, 1966.
2. Order and Judgment of Statutory Court dated June 15, 1966.
3. Supplemental Opinion and Order of Statutory Court dated August 4, 1966 (with dissenting opinion of Dooling, D.J.)

# UNITED STATES DISTRICT COURT

**EASTERN DISTRICT OF NEW YORK**

I. William Bianchi, Jr., and Quentin B. Sammis,
*Plaintiffs,*
*against*
Evans K. Griffing, William P. Bain, Lester M. Albertson, William J. Leonard, Stephen F. Meschutt, Ralph J. Osgood, Charles R. Dominy, Robert J. Flynn, Arthur M. Cromarty, and Thomas J. Harwood, constituting the Board of Supervisors of Suffolk County, New York,
*Defendants.*

Civil Action File No. 62-C-821

Before: Moore, U. S. C. J., Bruchhausen and Dooling, U. S. D. JJ.

Moore: Circuit Judge

This proceeding was commenced on July 27, 1962. After hearing argument on September 30, 1963, a judgment was entered on March 3, 1965 wherein, although the injunction sought in the complaint was denied, the denial was "with-

out prejudice to renewal in the absence, within a reasonable time, of the political action afforded government bodies to be taken as indicated in the Court's decision herein." *Bianchi et al.* v. *Griffing et al.*, 238 F. Supp. 997; appeal dism. 382 U. S. 15 (1965).

Gross inequality of individual voter representation amongst the ten towns of the County scarcely can be disputed. Attempting to follow the precepts of the Supreme Court as they relate to constitutional equal protection of the laws with respect to the voting privilege of the individual citizen, the State courts in many of the counties of New York State have directed that such inequalities be remedied and have entered judgments hopefully designed for this purpose.* Although the State Court in each malapportioned county would seem to have been better able, because of its more intimate knowledge of the local conditions existing therein, to pass upon the particular relief required to remedy any malapportionment situation, nevertheless the constitutional question is properly in the federal court and jurisdiction cannot be sloughed off.

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* *Seaman* v. *Fedourich*, 258 N. Y. S. 2d 1008; 259 N. Y. S. 2d 1021; 16 N. Y. 2d 94, 262 N. Y. S. 2d 444; 47 Misc. 2d 26, 262 N. Y. S. 2d 591 (Sup. Ct. Broome Co., 1965).

*Shilbury* v. *Board of Supervisors, Sullivan County*, 46 Misc. 2d 837, 260 N. Y. S. 2d 931 (Sup. Ct. Sullivan Co. 1965) aff'd 267 N. Y. S. 2d 1022 (Third Dept. 1966).

*Augostini* v. *Lasky*, 46 Misc. 2d 1058, 262 N. Y. S. 2d 594 (Sup. Ct. Broome Co., 1965).

*Treiber* v. *Lanigan*, 48 Misc. 2d 434, 264 N. Y. S. 2d 797 (Sup. Ct. Oneida Co., 1965), modified 25 A. D. 2d 202 (Fourth Dept. 1966).

*Town of Greenburgh* v. *Board of Supervisors*, 266 N. Y. S. 2d 998 (Sup. Ct. Westchester Co., 1966).

*Dona* v. *Board of Supervisors*, 266 N. Y. S. 2d 229 (Sup. Ct. St. Lawrence Co., 1966).

*Graham* v. *Board of Supervisors, Erie County*, 267 N. Y. S. 2d 383 (Sup. Ct. Erie Co., 1966).

See also, *Lodico* v. *Board of Supervisors of the County of Rockland, et al.*, No. 2361, U. S. D. C., S. D. N. Y., Croake, J., May 20, 1966.

Since "apportionment is primarily a legislative rather than a judicial function," *Graham* v. *Board of Supervisors, Erie County*, 267 N. Y. S. 2d 383, 394, this court had hoped that some definitive action would be taken by the Board of Supervisors to have the Board more equally representative of the voters of the county than is true at the present time. No such action, however, has been taken and plaintiffs, acting under the privilege given to them, in December 1965 renewed their application for relief.

A Committee (25 in number) on Re-Apportionment for the County of Suffolk was appointed by the Board. At its first meeting on December 15, 1965 the Commissioner of the New York State Office of Local Government, John J. Burns, presented his views and an outline of a proposed reapportionment plan which maintained the towns as units having one Supervisor each except that one Supervisor was to be added for each 100,000 of population or fraction thereof for towns of over 100,000 population. Weighted voting on the basis of one vote for each 10,000 of population was to supply the equal protection element. Counsel Milton Alpert referred to instances where the courts themselves had imposed temporary reapportionment.

A second meeting of the Committee was held on January 4, 1966 at which various members offered suggestions as to a legislative body for the County to be elected at large, elected from assembly districts, elected from supervisor districts to be created, or elected from units of population. Arguments for and against weighted voting were advanced.

At subsequent meetings held on February 2, 1966, March 2, 1966 and March 16, 1966, other ideas as to plans were presented and discussed. A vote taken at the March 30, 1966 meeting showed a wide range of views as to the basic units for reapportionment and the weighting of votes.

The meeting of May 4, 1966 voted to submit four plans to the Board. In its report dated May 9, 1966, the Committee presented to the Board four recommended plans: (1)

Burns-Klein (weighted Vote); (2) Lazer Plan "A" (Districting); Albertson (At-Large); and (4) Lundberg Plan "A" (Miscellaneous). At its meeting held on May 31, 1966 two of the four plans were preferred but the Board was unable to express a preference between these two. A local law (Local Law Intro. No. 1—1966, Suffolk County, New York) was introduced at a special meeting of the Board on May 31, 1966; the County Attorney is, however, unable to state that the Local Law is likely to be adopted.

The plans for which the County Board indicated a preference were the Albertson and the Klein (or Klein-Burns) plan. The Albertson plan would provide ten supervisors as at present, one from each town. The county supervisor could also hold the office of town supervisor. However, all county supervisors would be elected by county-wide balloting—the voter in Huntington (and every other town) voting for a slate of ten supervisors, one from each town. Each candidate running county-wide for county supervisor would also be permitted to run simultaneously in his own town for the office of town supervisor. The Klein plan would provide for continuing the ten town supervisors as members of the County Board of Supervisors and would accord each of them one vote for each ten thousand persons in his town; towns having over 100,000 of population would elect a second "county" supervisor, and towns having over two hundred thousand of population would elect a third supervisor. No town would have less than one vote, no supervisor more than ten votes; supervisors from the same town would share the votes equally but odd votes would go to the town supervisor or, if there were three supervisors and two "odd" votes, then to the town supervisor and the "county" supervisor who polled the larger number of votes.

The third plan was the Lazer plan. It would provide twenty county supervisors elected in districts varying in 1960 size between 30,261 and 35,925. The districts would be made up from existing election districts and would cut across town lines. Shelter Island, Southold and Riverhead

would share one supervisor and Southampton and Easthampton would share one supervisor.

The fourth plan was the Lundberg Plan A. It would continue the ten town supervisors and each would have one vote at County meetings. In addition, ten "county coordinators" in addition to a county executive would be elected at large in the county. The County coordinators would do all the legislative committee work and each would have a single vote in county meetings, the County Executive continuing, as now, to have a tie-breaking vote. The theory of Plan A is that no combination of supervisors' votes could prevail over the votes of county-wide representatives and, presumptively, the large-town votes would be reinforced by large-town influence in the electoral selection of the county coordinators.

A Lundberg Plan B would have retained a county board of ten but would elect the members at large; the County Executive's tie-breaking vote and veto would continue as in the present charter. Membership on the county board would be made incompatible with holding town office.

Local Law Intro. No. 1 would continue the town supervisors as the membership of the county board and give each a vote equal to his town's census population divided by 10,000 except that no town supervisor should have less than one vote nor more than half the total votes of the board. Each supervisor would have one vote on selection of a presiding officer, presence of a quorum, rules of procedure and their amendment or repeal, and adjournment. The tie-breaking vote of the County Executive would be continued.

The Albertson plan would appear not to rectify but to perpetuate the malapportionment that now exists. The Klein plan, while it would add certain "county" supervisors, in effect, gives to the supervisors, town and county, votes equal to each 10,000 of population or weighted voting.

It is not for the courts to decree the kind of legislative body which should govern the people of Suffolk County.

The courts' function should be limited to guaranteeing to the voters that the vote of their representative will be as nearly equal to that of every other voter as may be possible. Although the current trend in reapportionment has been in the direction of mere numerical equality, there well may be other factors of importance to be considered. Thus, in a county in which the town has been the unit for over 200 years, there may be good and sufficient reasons for the preservation of these units. Consistent with such preservation might be the super-imposition of a legislative body for the county, quite apart from the towns. New supervisory districts might seem preferable to the voters as an equalization measure. In any party system of government, selection of candidates will be a factor. To date the Town Supervisor plays two roles, one as Chief Executive of the Town, the other as a member of the County Board. Proper representation may call for his presence on the County Board to speak for his Town but his right to speak for his Town should not carry with it a widely disproportionate voting power. Under present laws both Town and County governing bodies have specified powers. To the extent that these County-wide functions affect every resident of the County, they should be exercised by a body elected on a basis as nearly equal as possible.

The court is not unmindful of the unique situation which has developed in the County over the last decade or an even longer period. The extraordinary population increase and the urbanization of the western part of the County have created the problem now before us. The population figures with respect to the towns of the eastern section of the County attest to no such expansion as yet. In short the court can take judicial notice of the present character of the County as being urban and industrial in the western portion and rural and agricultural in the eastern. Insofar as these differences affect the towns themselves, the town governments must, and undoubtedly will, deal with them as they and their local constituents desire. The problem

now before us relates only to the over-all County functions and the County legislative body to legislate as to them. As previously mentioned, in the selection of this body there well may be considerations other than mere numerical equality although this must be accepted as the primary factor from which a radical departure would lead to a court rejection as unconstitutional.

This outline of the problems as they appear to the court and of the action taken thus far is intended as a background for decision. It is obvious to the court that there must be a change in the voting power of each of the present County supervisors so as to give to the voter more equal representation in his vote. The Committee on Re-Apportionment has shown by its conscientious endeavors in the debating and drafting of the several plans mentioned a genuine awareness of the problems facing them. "It must be recognized that officials committed with the responsibility of devising a proper method of apportionment are operating in a very difficult and rather novel field of the law,***." *Shilbury* v. *Board of Supervisors, Sullivan County,* 46 Misc. 2d 837,842-843, 260 NYS 2d 931,937, (1965). Aff'd 267 NYS 2d 1022 (1966).

During the many months of deliberation, the Board has been mindful of the various methods suggested for a solution, both because of the presence of Board members on the Committee and the actual presentation to it of the four plans. As the Board is now constituted, its voting power is not truly representative of the voter of the County at large. The adoption of any plan or plans and the submission thereof to the voters at the next (November 1966) election by the Board on the present basis of one vote per town would be tainted with the infirmity of the existing malapportionment. In taking such action as to a plan for proper representation, the present Board should speak for the County. The court does not imply that each individual member of the Board has not given his best judgment in his vote on County-wide matters, but the fact re-

mains that the single vote of the representative of 1,300 voters and the same single vote of the representative of 170,000 voters is not equal voter representation. Therefore, to give the County at once, because immediate action is imperative, representation by its presently constituted Board in the formulation and submission to the voters of a plan or plans, the voting power of each member of the Board must be adjusted so as better to speak for the residents of their respective towns.

The federal courts will do well in dealing with such local matters as are thrust upon them to be guided by, and to give due deference to, the decisions of the State courts dealing with similar problems. Fortunately, there have been many such decisions by the courts of New York. In those cases the form of the judgment or decree in substance has been to direct the Boards of Supervisors to adopt a legal, valid and constitutionally acceptable plan which will enable the voters at the next election, at which supervisors or a corresponding legislative body would be elected, to elect their county representatives.

In *Seaman* v. *Fedourich*, 47 Misc. 2d 26 (1965) on remand after the decision by the New York Court of Appeals, 16 NY 2d 94 (1965), the Common Council of Binghamton was directed to "adopt and submit to this court for approval a districting plan, which, in good faith, is intended to meet constitutional requirements of equal representation;" (p. 29). In both the Binghamton and the Sullivan County *(Shilbury, supra)* cases, to use two for illustrative purposes, the courts decreed weighted voting by the present Boards of Supervisors "as a stopgap or temporary measure" to "redress disparities" *(Shilbury)* until a permanent plan became effective.

Although there are differences of opinion as to the practical advisability and the legality of weighted voting, it has the merit that it can be made effective at once and if recognized as a temporary stopgap will give to the voter only that qualitative protection to which he is entitled.

However, the New York courts have stressed weighted voting as a "temporary" expedient to be used until a permanent plan is adopted. Doubt as to weighted voting was expressed in *WMCA, Inc.* v. *Lomenzo*, 238 F. Supp. 916 (U. S. D. C. S. D. N. Y. 1965). Furthermore, there may be a real question as to whether the concentration of votes in one or more supervisors does more than create a monolithic voting power, which might be avoided by employing other means that would equate population with representation, such as, for example, districting a town for electoral purposes or invoking proportional representation.

This court recognizes that the terms valid, legal or constitutionally acceptable cannot take on such a character until some court of last resort has conferred this status upon them. Witness the situation in *Lucas* v. *Forty-Fourth General Assembly of State of Colo.*, 377 U. S. 713 (1964). The direction to submit a plan or plans to this Court for approval may not be an ending but at least it will be a beginning. In final analysis (subject to conformity with constitutional requirements, see *Lucas, supra*), the people of the County should have the right to express their preference as to the legislative body which is to govern their county. However, for the present, it is sufficient to conform the voting strength of the Board members to the population represented. The most arithmetical method would be to give each Board member a vote equalling that fraction obtained from a numerator of his Town's and a denominator of the County's, total population using the 1960 federal census. Since a weighted vote is to be only a stopgap until a permanent plan is formulated, approved and adopted, an assignment to such supervisor of number of votes equal to the number, to the nearest whole number, obtained by dividing the population of his Town (1960 federal census) by 5,000, providing that no supervisor shall have less than one vote, should serve better to equalize the voting strength of the various areas of the County.

A time schedule is important. The discussions during the past many months have undoubtedly enabled the pros

and cons of the various plans proposed to be considered. There must ultimately be a time for decision. Therefore, from and after the filing of this opinion the votes of the present Board shall be counted as herein indicated continuing in this manner until a permanent plan shall have been adopted. On or before July 11, 1966, the Board shall present a plan to this court, copies thereof to be served on all parties to the proceeding, which the Board proposes to adopt as an amendment of the Suffolk County Charter acting within the powers conferred upon the Board therein and for submission to the electorate of the County at the November 1966 election; or, in the event that the Board wishes to present two or more plans to the electorate at said election, such plans shall be so submitted. Objections to any plan or plans so submitted may be filed with this court or before July 18, 1966.

An order consistent with this opinion is being entered forthwith and this Court will retain jurisdiction of the proceedings, both to review the plan or plans submitted and for such further relief as may become necessary or appropriate in connection with the implementation of this order.

LEONARD P. MOORE
U. S. C. J.

WALTER BRUCHHAUSEN
U. S. D. J.

JOHN F. DOOLING, JR.
U. S. D. J.

Brooklyn, New York
June 15, 1966.

## Order

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

I. WILLIAM BIANCHI, JR., and QUENTIN B. SAMMIS,
Plaintiffs,
*against*
EVANS K. GRIFFING, WILLIAM P. BAIN, LESTER M. ALBERTSON, WILLIAM J. LEONARD, STEPHEN F. MESCHUTT, RALPH J. OSGOOD, CHARLES R. DOMINY, ROBERT J. FLYNN, ARTHUR M. CROMARTY, and THOMAS J. HARWOOD, constituting the Board of Supervisors of Suffolk County, New York,
Defendants.
} 62-C-821

The Board of Supervisors having moved to dismiss the complaint, or dissolve the statutory court, or permit the defendants to file an amended answer, or for summary judgment, it is

ORDERED AND ADJUDGED

1. That Section 203 of the Suffolk County Charter is invalid as applied because it is in conflict with the equal protection clause of Section 1 of the Fourteenth Amendment to the United States Constitution and Sections 1 and 11 of Article 1 of the New York Constitution;

2. That commencing June 15, 1966, and continuing until the Board of Supervisors is reconstituted under a constitutionally valid plan each present supervisor and his successors shall cast at meetings of the Board of Supervisors

(other than a vote to determine whether or not to appeal from this order and on any appeal therefrom) a number of votes equal to the quotient of the population of his Town (1960 federal census) by 5,000 to the nearest whole number, providing, however, that no supervisor shall have less than one vote.

3. That the Board of Supervisors and such other persons or entities as may have authority to do so under the Laws and Constitution of New York submit on or before July 11, 1966, to the Court a plan or plans for reconstitution of the Board of Supervisors or other County legislative body, and providing for submission of the plan or plans to the electorate of the County at the November 1966 general election so that a Board of Supervisors or other legislative body may be elected pursuant to a plan thus adopted to take office no later than January 1, 1968, and upon such submission the Court will order an immediate hearing to determine whether or not it is reasonably probable that the plan or plans, if adopted, would be found valid; and

4. That this Court retains jurisdiction to review the plan or plans submitted pursuant to paragraph 3 and for such further relief as may become appropriate in connection with the implementation of this order.

LEONARD P. MOORE
U. S. C. J.

WALTER BRUCHHAUSEN
U. S. D. J.

JOHN F. DOOLING, JR.
U. S. D. J.

Brooklyn, New York
June 15, 1966

# UNITED STATES DISTRICT COURT

## Eastern District of New York

I. William Bianchi, Jr. and Quentin B. Sammis,
Plaintiffs,

*and*

Town of Huntington,
Plaintiff-Intervenor,

*against*

Board of Supervisors of Suffolk County, New York,
Defendant,

*and*

Town of Southampton, Town of East Hampton, Town of Riverhead, Town of Southold, and Town of Shelter Island, Robert T. Cameron, as Supervisor of the Town of Southampton; Edward V. Ecker, as Supervisor of the Town of Easthampton; Robert B. Vojovoda, as Supervisor of the Town of Riverhead; Lester M. Albertson, as Supervisor of the Town of Southold; and Evans K. Griffing, as Supervisor of the Town of Shelter Island,
Defendants-Intervenors.

Civil Action File
No. 62-C-821

Before: Moore, U. S. C. J., Bruchhausen and Dooling, U. S. D. JJ.

Per Curiam

By order dated June 15, 1966, this court directed the Board of Supervisors of Suffolk County to submit a plan

or plans for election of such Board in a manner eliminating the voting malapportionment in the election of the Board as presently constituted. Thereafter, the Board caused to be submitted various plans together with a resolution indicating its preference as to priority, namely:

1. The Hanse plan and modifications thereof referred to in Resolution No. 459-1966 as Plans A-E. Plan A is essentially a weighted vote plan preserving, however, the present method under which the Town Supervisors from each of the ten towns constitute the County Board of Supervisors. Plans B-E would add to the Board additional county supervisors depending on the population of the towns and assigning the number of votes on the Board in accordance with the populations of the towns electing the supervisors.

2. The Dominy Plan (Resolution No. 456-1966) provides for additional Supervisors to be added to the existing Board, one to be elected from each of the Assembly Districts (now six) in the county.

3. The Albertson plan (Resolution No. 463-1966) calls for the election of ten Supervisors by the County at large for terms of four years, five to be elected every second year.

4. The Ecker plan (Resolution No. 465-1966) provides for a bicameral legislative body with the present method of Board construction being preserved for an Upper House and a Lower House to be elected at large or from representative districts.

Objections were filed by plaintiffs and the Town of Huntington (1) to the plan (Resolution No. 456) calling for additional Supervisors for Assembly Districts; (2) to Plan A (weighted voting); (3) to an election at large plan (Resolution No. 463); and (4) the bicameral plan (Resolution No. 465), and plaintiffs and the Town of Huntington moved to declare their probable unconstitutionality and to declare the probable constitutionality of Plan E (Resolution No.

459) which provides for a number of legislators (supervisors) from each town equal to the quotient obtained by dividing the town's population by 50,000, the number of votes to be shared by such representatives to be obtained by dividing each town's population by 2,500.

The defendants-intervenors being the towns of Southampton, East Hampton, Riverhead, Southold and Shelter Island and the respective Supervisor defendants moved to declare the probable unconstitutionality of Plans A-E and to declare the probable constitutionality of the election at large plan (Resolution No. 463) and the additional supervisors for Assembly Districts plan (Resolution No. 456).

Hearings on the objections were held on July 28, 1966.

At the outset it is the opinion of the court that the plan (Resolution No. 456-1966) which would add to the present Board six Supervisors, one each from the now existing Assembly Districts, and the plan (Resolution No. 465-1966) providing for a bicameral legislative body for the County do not meet the requirements for constitutionality as set forth in the Supreme Court decisions on reapportionment. The court is also of the opinion that Plan A (Resolution No. 459-1966) is defective in that it provides for straight weighted voting by the Supervisors on the Board as presently constituted. The Court is reinforced in this conclusion by the recent decision of the New York Court of Appeals in *Graham* v. *ano.* v. *Board of Supervisors,* Erie County, New York, etc., decided July 11, 1966, (267 NYS 2d 383; 269 NYS 2d 477, modified by Court of Appeals July 11, 1966), wherein it approved such a weighted voting plan "but solely as a temporary expedient", stating that "Although weighted voting has inherent defects, it does provide more of the attributes of equal representation than the existing apportionment of the Erie County Board of Supervisors." The Court of Appeals then preceeded to direct the Board "to draft a permanent plan, based on the principle of 'one man, one vote,' by September 1, 1966, and to

submit it for the approval or disapproval of the electorate at the November 1966 election."

Although straight weighted voting may be defective, the Plans B-E by adding an additional member or additional members to the Board dependent upon population and by ratably dividing between the Supervisors from each town the votes given to the respective towns in accordance with units of population may avoid the defects noted by the New York Court of Appeals and also found in Plan A. As to the Albertson Plan, the election of its legislative body by the County at large would appear to re.olve any difficulties as to mere equality of vote; there may be other factors than mathematical equality to be considered. However, the Plan is probably, if marginally, constitutional.

The present order of the Court will, then, be in substance that the Board adopt a Local Law modifying the present County Charter, so as to eliminate the present imbalance in the voting strength of the members of the present Board as related to the population of the towns represented by them to comply with the requirements of the Fourteenth Amendment of the United States Constitution and Article I, sections 1 and 11 of the New York State Constitution and the decisions of the Supreme Court on reapportionment and that the Board cause such plan or plans to be submitted to the qualified electors of the County at the general election to be held on November 8, 1966.

Such Local Law may present to the qualified voters inconsistent (see Municipal Home Rule Law Section 33 sd.9) plans, together with a clear provision that inconsistent plans may be voted for by the elector and that the elector may vote for one plan or more and against one or more or all alternative plans, and that if one or more plans than one receive the required majority, the plan receiving the largest affirmative vote shall prevail. Such Local Law must be such that if it is made effective by the vote of the electors at the November 8, 1966 election, it will re-

sult in the election at or before the general election of 1967 of a Board of Supervisors to take office on or before January 1, 1968.

Nothing herein said and no action taken hereunder shall be deemed to preclude any appropriate action by the Board or any member thereof in the event that the present decision of this court dated February 15, 1965 now on appeal to the Supreme Court is reversed and such Local Law may provide for a termination of its effectiveness in the event of reversal.

This opinion constitutes the order in this case.

LEONARD P. MOORE
U. S. C. J.

WALTER BRUCHHAUSEN
U. S. D. J.

JOHN F. DOOLING, JR.
U. S. D. J.

Brooklyn, New York
August 4th, 1966

# UNITED STATES DISTRICT COURT

## Eastern District of New York

I. William Bianchi, Jr. and Quentin B. Sammis,
Plaintiffs,

*and*

Town of Huntington,
Plaintiff-Intervenor,

*against*

Board of Supervisors of Suffolk County, New York,
Defendant,

*and*

Town of Southampton, Town of East Hampton, Town of Riverhead, Town of Southold, and Town of Shelter Island, Robert T. Cameron, as Supervisor of the Town of Southampton; Edward V. Ecker, as Supervisor of the Town of East Hampton; Robert B. Vojvoda, as Supervisor of the Town of Riverhead; Lester M. Albertson, as Supervisor of the Town of Southold, and Evans K. Griffing, as Supervisor of the Town of Shelter Island,
Defendants-Intervenors.

Civil Action
No. 62-C-821

Before: Moore, U. S. C. J., Bruchhausen and Dooling, U. S. D. JJ.

Dooling, D. J. Dissenting:

I dissent from so much of the decision as suggests that Plans B through E of Resolution 459 may avoid the defects

of weighted voting found in Plan A. In view of the grave disparities in supervisor voting strength and the radical dilution of effective representation of the citizens of the more populous towns that would necessarily result, I am unable to say that any of Plans B through E of Resolution 459 is probably Constitutional. See *Shilbury* v. *Board of Supervisors,* 46 Misc. 2d 837, 842-843 aff'd 25 App. Div. 2d 688; *Graham* v. *Board of Supervisors,* 267 N. Y. S. 2d 383, 393-394, modified 269 N. Y. S. 2d 477, modified by Court of Appeals, July 11, 1966; *WMCA Inc.* v. *Lomenzo,* 238 F. Supp. 916, 923-924; Weinstein, The Effect of Federal Reapportionment Decisions on Counties etc., 65 Col. L. Rev. 21, 41-46.

JOHN F. DOOLING, JR.
U. S. D. J.

Brooklyn, New York
August 4, 1966.

# Appendix B

1. **Decision of Three Judge Statutory Court dated February 1, 1965.**

2. **Order and Judgment of Statutory Court dated March 3, 1965.**

UNITED STATES DISTRICT COURT

E. D. NEW YORK

Feb. 1, 1965

Civ. A. No. 62-C-821

I. WILLIAM BIANCHI, JR. and QUENTIN B. SAMMIS,

*Plaintiffs,*

v.

EVANS K. GRIFFING, WILLIAM P. BAIN, LESTER M. ALBERTSON, WILLIAM J. LEONARD, STEPHEN F. MESCHUTT, RALPH J. FLYNN, ARTHUR M. CROMARTY and THOMAS J. HARWOOD, constituting the Board of Supervisors of Suffolk County, New York,

*Defendants.*

* * *

Before MOORE, Circuit Judge, and BRUCHHAUSEN and DOOLING, District Judges.

MOORE, Circuit Judge.

Plaintiffs, I. William Bianchi, Jr., and Quentin B. Sammis, residents of the Towns of Brookhaven and Huntington, Suffolk County, State of New York, bring this action

in their own behalf and in behalf of all other taxpayers and voters of Suffolk County, against the ten individual defendants, each of whom is an elected Supervisor of his respective town and who collectively constitute the Board of Supervisors of Suffolk County (1) to declare void and invalid as violative of the Fourteenth Amendment of the United States Constitution so much of Section 203 of the Suffolk County Charter, Laws 1958, c. 278 as provides that each Supervisor shall have one vote as a member of the Suffolk County Board of Supervisors; (2) to enjoin the defendants from acting as the Board of Supervisors unless and until a change in their voting strength is made; and (3) to cause to be convened a three-judge court to hear and determine the case (28 U. S. C. § 2281 et seq.). A motion was made to dismiss the complaint upon the ground, amongst others, that no substantial federal question is raised. The motion was denied without prejudice to renewal before a three-judge court, *Bianchi* v. *Griffing*, 217 F. Supp. 166 (E. D. N. Y. 1963). Thereafter, a three-judge court was convened and a hearing was held, upon which the motion to dismiss was renewad.

[1] Many cases have been pending in the Supreme Court and in other courts arising out of the decision in *Baker* v. *Carr*, 369 U. S. 186, 82 S. Ct. 691, 7 L. Ed. 2d 663 (1962) but despite the plethora of cases filed and the Supreme Court decisions of June 1964, there has been found no Supreme Court case which overturns the principle announced by that Court that section 2281 does not apply where "although the constitutionality of a statute is challenged, the defendants are local officers and the suit involves matters of interest only to the particular municipality or district involved." *Ex parte Collins*, 277 U. S. 565, 568, 48 S. Ct. 585, 586, 72 L. Ed. 990 (1928). See also *Rorick* v. *Board of Com'rs*, 307 U. S. 208, 59 S. Ct. 808, 83 L. Ed. 1242 (1949); *Ex parte Public Nat'l Bank*, 278 U. S. 101, 49 S. Ct. 43, 73 L. Ed. 202 (1928).

The recent Supreme Court decisions (June 15, 1964)[1] have decided that "the seats in both houses of a bicameral state legislature must be apportioned on a population basis." *Reynolds* v. *Sims*, 377 U. S. 533, 568, 84 S. Ct. 1362, 1385, 12 L. Ed. 2d 506 (1964); that such apportionment must be "sufficiently on a population basis to be constitutionally sustainable." *WMCA, Inc.* v. *Lomenzo*, 377 U. S. 633, 653, 84 S. Ct. 1418, 1428, 12 L. Ed. 2d 568 (1964); and "the fact that an apportionment plan is adopted in a popular referendum is insufficient to sustain its constitutionality or to induce a court of equity to refuse to act." *Lucas* v. *Forty-Fourth General Assembly of State of Colo.*, 377 U. S. 713, 736, 84 S. Ct. 1459, 1473, 12 L. Ed. 2d 632 (1964). The Court found "no significance in the fact that a non-judicial, political remedy [such as initiative and referendum] may be available for the effectuation of asserted rights to equal representation in a state legislature." Ibid. In other words, the fact that "a majority of the people choose to do so," and that a "legislative apportionment plan was approved by the electorate is without federal constitutional significance, if the scheme adopted fails to satisfy the basic requirements of the Equal Protection Clause, as delineated in our opinion in *Reynolds* v. *Sims*." Id., 377 U. S. at 737, 84 S. Ct. at 1474.

However, these cases all dealt with the election of state legislative bodies. To date the Court has not had to consider whether the Equal Protection Clause applies as well to the method of electing the officials of hamlets, villages, school, fire, sewerage and water districts, towns, cities or

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[1] *Reynolds* v. *Sims*, 377 U. S. 533, 84 S. Ct. 1362, 12 L. Ed. 2d 506 (1964); *WMCA Inc.* v. *Lomenzo*, 377 U. S. 633, 84 S. Ct. 1418, 12 L. Ed. 2d 568 (1964); *Maryland Committee for Fair Representation* v. *Tawes*, 377 U. S. 656, 84 S. Ct. 1429, 12 L. Ed. 2d 595 (1964); *Davis* v. *Mann*, 377 U. S. 678, 84 S. Ct. 1441, 12 L. Ed. 2d 609 (1964); *Roman* v. *Sincock*, 377 U. S. 695, 84 S. Ct. 1449, 12 L. Ed. 2d 620 (1964); *Lucas* v. *Forty-Fourth General Assembly of State of Colo.*, 377 U. S. 713, 84 S. Ct. 1459, 12 L. Ed. 2d 632 (1964).

counties, whether, that is, the right to vote is protected by the Equal Protection Clause in its every exercise, or only in some restricted class of definably important voting occasions.

This Suffolk County case does not involve the election of members of the houses of the state legislature. It does attack, however, the provision of the Suffolk County Charter whereby the County Board of Supervisors, which has a local legislative authority, is to consist of the elected Supervisors of each of the county's ten towns.

The basic theory of the action is disparity of representation. Concerning disparity, there can be no question. The ten towns of Suffolk were never of equal population; town lines were not drawn on a population basis and did not profess to be so drawn. In addition, over the years radical population changes as a result of economic and industrial developments have taken place in eastern Long Island. The locations of large defense plants in this area has brought thousands of families into the westerly towns of Suffolk County. The eastern area remains thinly populated; the western has become rather densely populated. Thus, for example, the town of Shelter Island finds itself about as it was 150 years ago with its population stabilized at some 1,300 persons whereas the towns of Islip, Huntington and Babylon, to take extreme cases, have some 172,000, 126,000 and 142,000[2] persons, respectively.

Each town has elected its chief executive officer (the supervisor) and no fault can be found with this practice. The trouble arises, so aver the plaintiffs, because the supervisors of the ten towns constitute the Board of Supervisors of the County which is the legislative body of the County. Little mathematical ingenuity is required to prove plaintiffs' thesis that the vote in County management affairs by the Supervisor from Shelter Island is representative of 1,300 persons whereas the equal vote of

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[2] 1960 census.

the supervisor of the town of Islip is representative of over 172,000 persons. The individual vote ratio is over 100 to 1 in favor of Shelter Island and against Islip. If county government within the States must conform to the Equal Protection Clause, as must congressional and legislative districts in the various States, then obviously *Baker* v. *Carr, supra,* and the June 1964 cases, *supra,* call for action. But first there is the fundamental question of how far should the federal judiciary go, or interest itself, in extending *Reynolds* v. *Sims* to local governmental bodies in states the legislatures of which are now required to be apportioned on a population basis. The question is not easy to decide. Like so many legal problems, the solution may well be dependent upon degree.

*Baker* v. *Carr* and kindred cases presented fairly simple situations. State constitutions providing for a definite system of representation according to numbers were completely ignored. The legislatures which under their own constitutions should have made the changes required flagrantly refused to obey their own constitutional mandates. In view of such refusals, there seemed to be no other alternative than for the courts to assume this function. Thus, at one end of the popular representation spectrum there is the congressional and state district equality-of-vote-doctrine. At the other end could be taken the logical extreme of the election of village trustees from wards of unequal population: it may be doubtful that the federal judiciary would declare the method unconstitutional and forthwith order a general election by the village at large[3] at least where a re-apportioned legislature exists and change is in the wind.

Between these two extremes lie the many minor governmental units referred to such as fire, water, sewer,

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[3] *McMillan* v *Wagner,* 239 F. Supp. 32 (S. D. N. Y., 1964); *Ellis* v. *Mayor and City Council of Baltimore,* 234 F. Supp. 945 (D. Md., 1964).

school districts, towns, villages and cities. Somewhere in the middle ground falls this Suffolk County case.[4]

Pursuant to its constitutional authority, N. Y. Const., Art. IX, the New York State legislature has given to the counties of the State the right to have a county charter. Such a charter was enacted for Suffolk County and in 1958 (election of November 4, 1958) the people of the county overwhelmingly adopted it. That Charter provides in section 201 for a County Board of Supervisors to consist of the supervisor of each town. By popular approval of the Charter in this form, defendants argue, the people of the county expressed themselves clearly and if there is to be any vestigial remainder to a government "of the people, by the people and for the people," such a vote should be sufficient proof of the wishes of the voters. But, if Lucas is to apply at all levels of local government and is not to be restricted to state legislative apportionment, voter approval would be of no value. Moreover, it may well be that in voting for the "charter," the voters expressed only their approval of its general "home rule" advantages over the earlier system, or it may be that the voters had no clear conception of the fact that the charter preserved the power of a comparatively small percentage of the county's population to elect a potential majority of the county's legislative body. Had the spotlight of publicity been focused on this latter point, the argument from the vote at the 1958 polls would be more convincing.

## I

Defendants by their motion to dismiss raise the question of the power of a three-judge federal court to act in the premises. Assuming justiciability, is this provision of

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[4] The whole area has been ably and thoroughly discussed by Professor Weinstein. The Effect of the Federal Reapportionment Decisions on Counties and Other Forms of Municipal Government, 65 Colum. L. Rev. 21 (1965).

the Suffolk Charter of such statewide interest as to be within the jurisdiction of such a court? Relatedly, is a substantial federal question now presented? And is the case, in any event, ripe for injunctive intervention? The cases which have had to deal with the problem of allegedly unequal representation in local-government elections have by no means given it uniform treatment.

In *Tedesco* v. *Board of Supervisors of Elections*, 43 So. 2d 514 (C. A. La., 1949), a resident of the Third District of New Orleans complained that approximately one-half the people of the City lived in the Third and Sixth Districts and were represented by only two-sevenths of the Commissioners in whom were vested administrative and executive powers for the City of New Orleans, and that the Louisiana statute producing the result violated the Fourteenth Amendment (United States Constitution). More specifically, the 8,508 voters of the Fifth District elected one Commissioner whereas the voters of the Third District numbering some 48,020 also elected one Commissioner. The court concluded that the statute was not violative of any provision of the Federal Constitution and affirmed the judgment dismissing the suit. An appeal to the Supreme Court was "dismissed for want of a substantial federal question." 399 U. S. 940, 70 S. Ct. 797, 94 L. Ed. 1357 (1950).

In Michigan [*Johnson* v. *Genesee County, Michigan*, etc., 232 F. Supp. 567 (E. D. Mich. 1964)], the plaintiffs questioned the validity of a sewer improvement authorized by the affirmative vote of the Board of Supervisors of Genesee County, on the ground that the Supervisors so voting represented less than a majority of the population of the county. There were serious imbalances in population representation on the Board, illustrated by one township having some 30,000 inhabitants, another 2,000 yet each having one member on the Board. City representation showed an even wider disparity. The court denied the claim for injunctive relief and dismissed the amended complaint. In the opinion it noted the June 15, 1964, rulings

of the Supreme Court and the docketing there of *Glass* v. *Hancock County Election Commission*, 156 So. 2d 825 (Miss. 1963) (appealed dismissed, 378 U. S. 558, 84 S. Ct. 1910, 12 L. Ed. 2d 1035 (1964)), in which case the question was raised as to whether the failure to redistrict county supervisor districts, like the failure to reapportion state legislative districts, violated the Fourteenth Amendment where there is population disparity. The Supreme Court of Mississippi had affirmed the denial of injunctive relief on the theory that there was an adequate remedy at law, namely, available statutory procedure for redistricting. The Michigan District Court also considered *Griffin* v. *Board of Supervisors*, 60 Cal. 2d 318, 33 Cal. Rptr. 101, 384 P. 2d 421 (1964), wherein the court ordered the redistricting of the supervisorial districts of the county. In that case, the California state statute required the districts to be "as nearly equal in population as may be."

Recently in the United States District Court for the Southern District of New York, a plaintiff (a voter of the City of New York) sued the Mayor and other city officials and the Attorney General and Secretary of State of New York alleging that sections of the New York City Charter (Sections 61 and 62 of Chapter 3) were unconstitutional because the voting power of each member of the Board of Estimate is weighted in favor of the less populated Boroughs. The Board of Estimate, the City's principal legislative body, consists of the Mayor, the Comptroller, and the President of the City Counsel, each of whom has four votes and the Presidents of the five Boroughs each of whom has two votes. There is substantial disparity in the populations of the Boroughs. The convening of a three-judge court was sought pursuant to 28 U. S. C. § 2281. Judge McLean denied the motion and, after pointing out that there was no unconstitutionality about the state statute authorizing the City of New York to have its own Charter, said: "That charter applies only to New York City. It is not a state statute of statewide application. The members of the Board of Estimate are city officials acting as

such, not officers of the state. * * * It is clear under the authorities that this case does not fall within Section 2281 and that the action should be tried in the regular way by a single judge, not by a three-judge court." *McMillan* v. *Wagner*, . . . F. Supp. . . ., U. S. (S. D. N. Y. 1964).

However, since the Supreme Court's June 15, 1964, decisions there have been cases extending their principle to lesser units of government than state legislatures. In Michigan (*Brouwer* v. *Bronkema*, Circuit Court for the County of Kent, No. 1855, September 11, 1964), Judge Searl had to consider Kent County, the Board of Supervisors[5] of which consisted of supervisors from 22 townships and 3 cities in the county; the per capita representation of each supervisor was most disproportionate. In a comprehensive and well-reasoned opinion, Judge Searl concluded that despite the enactment of the State's 1963 Constitution, "the Fourteenth Amendment voids the entire Michigan Plan."

On October 21, 1964, in an informal opinion wherein he, in effect, adopted Judge Searl's opinion, Judge Mize (*Damon, et al.* v. *Lauderdale County Election Commissioners, et al.*, Civil Action No. 1197-E, U. S. D. C. S. D. Miss.) said that "the Fourteenth Amendment is applicable to redistricting counties as well as the legislatures of the various states."

In *Ellis* v. *Mayor and City Council of Baltimore*, 234 F. Supp. 945 (D. Md., 1964), a voter action, declaratory and injunctive relief was sought on the ground that both the existing and the proposed apportionment of the City Council were invalid. The district court decided that the

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[5] Section 7 of Article VII of the Michigan Constitution of 1963 reads:

> "A board of supervisors shall be established in each organized county consisting of one member from each organized township and such representation [representative] from cities as provided by law."

principles applicable to the apportionment of state legislatures applied to the Baltimore City Council.

Most recently in *State ex rel. Sonneborn et al., Relators* v. *Sylvester,* County Clerk of Waukesha County, et al., Respondents, 132 N. W. 2d 249, filed January 5, 1965, the Supreme Court of Wisconsin held unconstitutional a provision of its state constitution providing for the composition of boards of supervisors on a town, ward and village basis which resulted in substantial disparities in voter representation. In so holding, the court said, "However, county boards possessing the type of legislative power which they do must be considered a unit of government which should be equally representative of the people of the county." And, "Since the composition of the legislature must conform to the principle of equal representation, it is logical that the arm or political subdivision of such legislature enacting legislation should be governed by the same principle of equal representation."

After the three-judge court in *Johnson et al.* v. *Genesee County, supra,* had returned the case to a single judge for decision (232 F. Supp. 563), Judge Roth wrote that "Under the rule of *stare decisis* [i.e., he had concluded that "Under the prevailing view of the United States Supreme Court, * * * the composition of local units of government is held to be a state matter"], this Court is not free to consider the subject of the apportionment of representation on local legislative bodies." He qualified this pronouncement, however, with the prophecy that, "It may well be that the time will come when the application of the Fourteenth Amendment will be extended that far. The more likely development is that the June 15, 1964, rulings of the Supreme Court in cases dealing with the state legislatures of Alabama, New York, Maryland, Delaware, Virginia and Colorado will result in legislatures in our states which will be proportionately representative of people, and therefore, likely to themselves establish in local legislative bodies a

vastly different balance between people and governmental power." 232 F. Supp. at 572.

Probably mindful of such possible curative measures being enacted, Judge Searl *(Brouwer* v. *Bronkema, supra)* had said, "Consistent with the course indicated as proper in the *Reynolds* case, this court will defer any action by injunction or otherwise until the 1965 Legislature has had an opportunity to remedy the deviations from constitutional standards in the present Michigan provisions providing for the membership of the County Board of Supervisors. The court will retain jurisdiction and in the event the Legislature fails to act, after it has had an adequate opportunity to do so, application may be made to this court for an appropriate remedy."

In the Baltimore City Council case (*Ellis* v. *Mayor*, etc), supra, although the court enjoined any election in November 1964 pursuant to certain provisions of the City Charter found to be invalid, it nevertheless said, "We will not undertake a valid reapportionment of the City Council of Baltimore at this time. Under the existing Charter, municipal elections will not again occur until May, 1967. If Resolution No. 1 is adopted, municipal elections will not occur until November, 1967. A general election will be held in November, 1966. There is, therefore, ample time for the City Council to propose a valid scheme of reapportionment and submit it to the voters for adoption before the next municipal election will be held. We will, however, retain jurisdiction of the case pending the adoption and approval by the voters of a valid scheme of reapportionment of the City Council." (234 F. Supp. at 959).

[2] The counties in New York are not established nor are their boundaries drawn by the State Constitution; they are entirely creatures of the legislature. The legislature has the power to alter, amend or even abolish the present charter and its provisions for a Board of Supervisors. It could, as an illustration, create some other "elective governing body" to be elected on a county-wide basis or from

election districts that it could define within the County, such body to function with respect to county legislative matters. A reapportioned legislature in New York may well decide that the mold of its creation be impressed upon the counties. Even under the present county charter, the voters can initiate a charter amendment (County Law, McKinney's Consol. Laws, c. 11, § 323). Moreover, a change in voting strength so as to equalize the supervisor representation can be effected by the supervisors themselves.

Under Section 33, subdiv. 5 of the Municipal Home Rule Law, McKinney's Consol. Laws, c. 36-a, the Board of Supervisors has ample power to provide for drafting charter amendments either under its own supervision, or under that of an officer of its designation or by a committee of its appointment or by a charter commission. Under Section 33, subdiv. 6 of the Municipal Home Rule Law, a petition by electors equal in number to ten percent of those who voted for the office of governor in the next preceding election can initiate a charter amendment by petition; the Board of Supervisors must then appoint a charter commission or put the matter to public referendum; if, on referendum, the county electors approve the appointment of a commission, the Board of Supervisors must appoint one.

When the Voters in 1958 approved the Suffolk Charter and the supervisors rejected a change in voting strength in 1962, the populace was not so aware of the existence of means of redressing voting disparity as it is at present. The courts in the ensuing years have supplied many guidelines. Although no state officer is named as a defendant in this suit and even though we were completely satisfied (which we are not) that no activity of the Board of Supervisors touches upon state interests, it would be unrealistic to ignore the similarity which exists between the selection of state and county legislative bodies. In county-wide administration, just as in state-wide administration, the inhabitants of the populous areas should not be governed by

representatives drawn from other and thinly populated areas.[6]

[3, 4] It is not for the courts to prescribe the type of representative government that is best suited to the needs of the voters of Suffolk County. The task of the courts is to determine whether particular methods transgress the Constitution. The formulation of schemes of representative government, in the first instance at least, is for the agencies of political action. If an invidiously disproportionate system is continued or approved, even if by a popular majority on referendum, as in Lucas, supra, the problems implicit in the present case will remain for judicial determination.

To deny federal jurisdiction here because state officials have not been made defendants will serve no useful purpose; the defect, if such, is remediable, and despite this deficiency, the constitutional problem remains. To dismiss the complaint without prejudice to a later action alleging substantial but unsuccessful efforts to alter the existing voting procedure by political means, seems needlessly technical. The framework of the action has been constructed. The issues are clearly defined. To retain jurisdiction in the three-judge court to await developments in the state legislature or within the County itself with respect to the selection of the County's legislative body, presents a third alternative.

It is not for this court to speculate about the type of representative government Suffolk County should have. Suffice it to say that the Board of Supervisors is constituted to serve as the legislative body for the County and, upon the present undisputed population disparity, it is not representative of the voters of the County as the Supreme Court has indicated is required of legislative bodies under the Equal Protection Clause.

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[6] The five least populous towns having approximately 10% of the county's population have five supervisors with voting strength equal to the five supervisors representing the remaining 90%.

As stated, the solution of the present problem is, in the first instance, for the agencies of political action. It is not shown that effective and appropriate political action is fettered by any legal obstacle or rendered practically unavailable by any indurated political habit. It is inferable that the matter is ready for significant political action in the light of the analyses of governmental structure that have followed in the wake of *Baker* v. *Carr, supra,* and *Gray* v. *Sanders,* 372 U. S. 368, 83 S. Ct. 801, 9 L. Ed. 2d 821 (1963).

If the same or a different but equally disproportionate system is continued, or is approved by a popular majority on referendum, the inquiry will not be at end; it will remain then to determine, if that occurs, whether apathy or even a popular majority can perpetuate or adopt a system that may be found to effect substantial disenfranchisement of voters in local-government elections.

Pending such events, the court will retain jurisdiction of the action with leave to the plaintiffs, in the event that an appropriate governing body has not been created for Suffolk County within the permitted standards for representation, to apply for further relief. At this time, it cannot be said that the legislature is unaware of the problem nor, in the light of current court pronouncements, can it now be said that it has failed to act.

The motion to dismiss the complaint is denied.

An injunction at this time would serve no useful purpose; accordingly, the application therefor is denied without prejudice to renewal.

UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF NEW YORK

I. William Bianchi, Jr., and Quentin B. Sammis,
*Plaintiffs,*
*against*

Evans K. Griffing, William P. Bain, Lester M. Albertson, William J. Leonard, Stephen F. Meschutt, Ralph J. Osgood, Charles R. Dominy, Robert J. Flynn, Arthur M. Cromarty, and Thomas J. Harwood, constituting the Board of Supervisors of Suffolk County, New York,
*Defendants.*

62 Civil 821

Before: Hon. Leonard P. Moore, Circuit Judge; Hon. Walter Bruchhausen, Hon. John F. Dooling, District Judges.

Upon the complaint, all of the motion papers, papers in opposition thereto, plaintiffs' application for an injunction, defendants' motion to dismiss the complaint, proceedings in open court on September 30, 1963, and hearings on said application and motion, the Statutory Court consisting of Hon. Leonard P. Moore, Circuit Judge, and Walter Bruchhausen and John F. Dooling, Judges of this Court, in an opinion dated and filed February 1, 1965, having concluded the defendants were not entitled to dismissal of the complaint and the plaintiffs were not presently entitled to the injunction relief applied for, such opinion constituting the findings of fact and conclusions of law herein.

IT IS ORDERED AND ADJUDGED

1. The plaintiffs' application for an injunction as prayed for in the complaint is denied without prejudice to renewal in the absence, within a reasonable time, of the political action afforded governmental bodies to be taken as indicated in the Court's decision herein.

2. The defendants' motion to dismiss the complaint is denied.

3. Jurisdiction of further proceedings which may be found to be necessary in this Court is retained.

Dated: Brooklyn, New York
March 3rd, 1965

/s/ LEONARD P. MOORE
*Circuit Judge*

/s/ WALTER BRUCHHAUSEN
*District Judge*

/s/ JOHN F. DOOLING, JR.
*District Judge*

## Appendix C

**Decision of Hon. Walter Bruchhausen, D. J., filed April 8, 1963**

I. William Bianchi, Jr., and Quentin B. Sammis,
*Plaintiffs,*
*v.*
Evans K. Griffing et al.,
*Defendants.*
} No. 62 C 821.

United States District Court
E. D. New York
April 8, 1963.

Bruchhausen, District Judge.

The defendants move to dismiss the complaint on the grounds that (1) no substantial federal question is raised; (2) the Court lacks jurisdiction over the subject matter; (3) the complaint fails to state a claim upon which relief can be granted; (4) the Court should abstain from exercising its equitable jurisdiction; and (5) there has been a failure to join an indispensable party.

### The Complaint

[1] The plaintiffs in their various capacities as citizens, taxpayers and voters of Suffolk County, New York, seek (1) judgment pursuant to 28 U. S. C. A. §§ 2201 and 2202 declaring invalid under the due process and equal protection clauses of the Fourteenth Amendment of the Constitution of the United States, so much of Section 203 of the Suffolk County Charter which provides that the defendants, constituting the Board of Supervisors of said County, shall each have one vote as members of the said Board, and (2) an injunction to restrain the defendants from acting in

their collective capacity as such Board until a constitutional change in the voting system is duly made and adopted pursuant to applicable law.

[2] Jurisdiction is asserted and relief requested both under the Civil Rights Act, 42 U. S. C. A. §§ 1983, 1988 and 28 U. S. C. A. § 1343(3) (4). Plaintiffs seek the convening of a three-judge court, pursuant to 28 U. S. C. A. § 2281 insofar as an injunction is sought restraining the enforcement or execution of a State statute.

It is alleged that each of the defendants resides in, and represents the voters of, one of the ten towns in Suffolk County; that the population of these towns varies from 1,367 to 191,280; that each defendant casts one vote without regard to the number of persons he represents; that the voting power is distributed solely on a geographic basis, that is one vote per town. It is further alleged that this arrangement arbitrarily exalts the voting strength of persons residing in the less populated towns, with no justification other than the present invidiously discriminatory geographic classification.

In *Baker* v. *Carr*, 369 U. S. 186, at page 199, 82 S. Ct. 691, at page 700, 7 L. Ed. 2d 663, the Court held in part:

> "Article III, § 2, of the Federal Constitution provides that 'The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority * * *.' It is clear that the cause of action is one which 'arises under' the Federal Constitution. The complaint alleges that the 1901 statute effects an apportionment that deprives the appellants of the equal protection of the laws in violation of the Fourteenth Amendment. Dismissal of the complaint upon the ground of lack of jurisdiction of the subject matter would, therefore, be justified only if that claim were 'so attenuated and unsubstantial as to be absolutely devoid of merit,' *Newburyport Water Co.* v. *Newburyport*, 193 U. S. 561, 579, 24 S. Ct. 553, 557, 48 L. Ed. 795, or 'frivolous,' *Bell* v. *Hood*, 327 U. S. 678, 683, [66 S. Ct. 773, 776, 90 L. Ed. 939]. That the claim

> is unsubstantial must be 'very plain.' *Hart* v. *Keith Vaudeville Exchange*, 262 U. S. 271, 274 [43 S. Ct. 540, 541, 67 L. Ed. 977]."

At page 200 of 369 U. S., at page 701 of 82 S. Ct., the Court further held in part:

> "Since the complaint plainly sets forth a case arising under the Constitution, the subject matter is within the federal judical power defined in Art. III, § 2, and so within the power of Congress to assign to the jurisdiction of the District Courts. Congress has exercised that power in 28 U. S. C. § 1343(3):
>
> " 'The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person * * * [t]o redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States * * *.' "

Mr. Justice Stewart in his concurring opinion at page 265, 82 S. Ct. at page 736 said in part:

> "The Court today decides three things and no more: '(a) that the court possessed jurisdiction of the subject matter; (b) that a justiciable cause of action is stated upon which appellants would be entitled to appropriate relief; and (c) * * * that the appellants have standing to challenge the Tennessee apportionment statutes.' "

The fifth ground asserted for dismissal is not strongly urged nor is it tenable.

After due and careful evaluation of the allegations of the complaint and consideration of the authorities cited by counsel which were examined and distinguished in *Baker* v. *Carr*, *supra*, the issues presented are of such a nature as to warrant the convening of a three-judge court. The allegations present a justiciable constitutional cause of action upon which the plaintiffs are entitled to a trial and determination. The right asserted is within the scope of judicial protection under the Fourteenth Amendment.

The motion is denied without prejudice to its renewal before the three-judge court. Settle order on five (5) days' notice, in compliance with 28 U. S. C. A. § 2284.

# Appendix D

## United States Constitution
## Article 4, Section 4

SECTION 4. *Republican government*

Section 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

* * *

## United States Constitution
## Fifth Amendment

AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

* * *

## United States Constitution
## Tenth Amendment

AMENDMENT X—RESERVED POWERS TO STATES

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

* * *

## United States Constitution

## Fourteenth Amendment

### Amendment XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the

Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

# Appendix E

## Federal Statutes

### 28 U. S. C. 1253 Supreme Court—Jurisdiction

§ 1253. *Direct appeals from decisions of three-judge courts*

Except as otherwise provided by law, any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges. June 25, 1948, c. 646, 62 Stat. 926.

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### 28 U. S. C. 1343 District Courts—Jurisdiction

§ 1343. *Civil rights and elective franchise*

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote. June 25, 1948, c. 646, 62 Stat. 932; Sept. 3, 1954, c. 1263, § 42,

68 Stat. 1241; Sept. 9, 1957, Pub. L. 85-315, Part III, § 121, 71 Stat. 637.

• • •

**28 U. S. C. 2201 Declaratory Judgments**

§ 2201. *Creation of remedy*

In a case of actual controversy within its jurisdiction, except with respect to Federal taxes, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such. June 25, 1948, c. 646, 62 Stat. 964; May 24, 1949, c. 139, § 111, 63 Stat. 105; Aug. 28, 1954, c. 1033, 68 Stat. 890; July 7, 1958, Pub. L. 85-508, § 12(p), 72 Stat. 349.

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**28 U. S. C. 2202 Declaratory Judgments—Further Relief**

§ 2202. *Further relief*

Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment. June 25, 1948, c. 646, 62 Stat. 964.

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**28 U. S. C. 2281 Three Judge Courts**

§ 2281. *Injunction against enforcement of State statute; three-judge court required*

An interlocutory or permanent injunction restraining the enforcement, operation or execution of any State statute by restraining the action of any officer of such State in the enforcement or execution of such statute or of an order made by an administrative board or commission acting under State statutes, shall not be granted by any district court or judge thereof upon the ground of the unconstitu-

tionality of such statute unless the application therefor is heard and determined by a district court of three judges under section 2284 of this title. June 25, 1948, c. 646, 62 Stat. 968.

* * *

**42 U. S. C. 1983 Civil Rights**

§ 1983. *Civil action for deprivation of rights*

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. R. S. § 1979.

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**42 U. S. C. 1988 Civil Rights**

§ 1988. *Proceedings in vindication of civil rights*

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this chapter and Title 18, for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty. R. S. § 722.

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# Appendix F

## New York Constitution

### Article 1—Bill of Rights

§ 1. No member of this state shall be disenfranchised, or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land, or the judgment of his peers, except that the legislature may provide that there shall be no primary election held to nominate candidates for public office or to elect persons to party positions for any political party or parties in any unit of representation of the state from which such candidate or persons are nominated or elected whenever there is no contest or contests for such nominations or elect on as may be prescribed by general law.

* * *

§ 11. No person shall be denied the equal protection of the laws of this state or any subdivision thereof. No person shall, because of race, color, creed or religion, be subjected to any discrimination in his civil rights by any other person or by any firm, corporation, or institution, or by the state of any agency or subdivision of the state.

### Article 9—Local Governments

§ 1. *Bill of rights for local governments*

Effective local self-government and intergovernmental cooperation are purposes of the people of the state. In furtherance thereof, local governments shall have the following rights, powers, privileges and immunities in addition to those granted by other provisions of this constitution:

(a) Every local government, except a county wholly included within a city, shall have a legislative body elective by the people thereof. Every local government shall have power to adopt local laws as provided by this article.

(b). All officers of every local government whose election or appointment is not provided for by this constitution shall be elected by the people of the local government, or of some division thereof, or appointed by such officers of the local government as may be provided by law.

(c) Local governments shall have power to agree, as authorized by act of the legislature, with the federal government, a state or one or more other governments within or without the state, to provide cooperatively, jointly or by contract any facility, service, activity or undertaking which each participating local government has the power to provide separately. Each such local government shall have power to apportion its share of the cost thereof upon such portion of its area as may be authorized by act of the legislature.

(d) No local government or any part of the territory thereof shall be annexed to another until the people, if any, of the territory proposed to be annexed shall have consented thereto by majority vote on a referendum and until the governing board of each local government, the area of which is affected, shall have consented thereto upon the basis of a determination that the annexation is in the over-all public interest. The consent of the governing board of a county shall be required only where a boundary of the county is affected. On or before July first, nineteen hundred sixty-four, the legislature shall provide, where such consent of a governing board is not granted, for adjudication and determination, on the law and the facts, in a proceeding initiated in the supreme court, of the issue of whether the annexation is in the over-all public interest.

(e) Local governments shall have power to take by eminent domain private property within their boundaries for public use together with excess land or property but no more than is sufficient to provide for appropriate disposition or use of land or property which abuts on that necessary for such public use, and to sell or lease that not devoted to such use. The legislature may authorize and regulate

the exercise of the power of eminent domain and excess condemnation by a local government outside its boundaries.

(f) No local government shall be prohibited by the legislature (1) from making a fair return on the value of the property used and useful in its operation of a gas, electric or water public utility service, over and above costs of operation and maintenance and necessary and proper reserves, in addition to an amount equivalent to taxes which such service, if privately owned, would pay to such local government, or (2) from using such profits for payment of refunds to consumers or for any other lawful purpose.

(g) A local government shall have power to apportion its cost of a governmental service or function upon any portion of its area, as authorized by act of the legislature.

(h) (1) Counties, other than those wholly included within city, shall be empowered by general law, or by special law enacted upon county requests pursuant to section two of this article, to adopt, amend or repeal alternative forms of county government provided by the legislature or to prepare, adopt, amend or repeal alternative forms of their own. Any such form of government or any amendment thereof, by act of the legislature or by local law, may transfer one or more functions or duties of the county or of the cities, towns, villages, districts or other units of government wholly contained in such county to each other or when authorized by the legislature to the state, or may abolish one or more offices, departments, agencies or units of government provided, however, that no such form or amendment, except as provided in paragraph (2) of this subdivision, shall become effective unless approved on a referendum by a majority of the votes cast thereon in the area of the county outside of cities, and in the cities of the county, if any, considered as one unit. Where an alternative form of county government or any amendment thereof, by act of the legislature or by local law, provides for the transfer of any function or duty to or from any village or the abolition of any office, department, agency or unit of

government of a village wholly contained in such county, such form or amendment shall not become effective unless it shall also be approved on the referendum by a majority of the votes cast thereon in all the villages so affected considered as one unit.

(2) After the adoption of an alternative form of county government by a county, any amendment thereof by act of the legislature or by local law which abolishes or creates an elective county office, changes the voting or veto power of or the method of removing an elective county officer during his term of office, abolishes, curtails or transfers to another county officer or agency any power of an elective county officer or changes the form or composition of the county legislative body shall be subject to a permissive referendum as provided by the legislature. Adopted by the people Nov. 5, 1963, eff. Jan. 1, 1964.

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§ 2. Powers and duties of legislature; home rule powers of local governments; statute of local governments

(a) The legislature shall provide for the creation and organization of local governments in such manner as shall secure to them the rights, powers, privileges and immunities granted to them by this constitution.

(b) Subject to the bill of rights of local governments and other applicable provisions of this constitution, the legislature:

(1) Shall enact, and may from time to time amend, a statute of local governments granting to local governments powers including but not limited to those of local legislation and administration in addition to the powers vested in them by this article. A power granted in such statute may be repealed, diminished, impaired or suspended only by enactment of a statute by the legislature with the approval of the governor at its regular session in one calendar year and the re-enactment and approval of such statute in the following calendar year.

(2) Shall have the power to act in relation to the property, affairs or government of any local government only by general law, or by special law only (a) on request of two-

thirds of the total membership of its legislative body or on request of its chief executive officer concurred in by a majority of such membership, or (b), except in the case of the city of New York, on certificate of necessity from the governor reciting facts which in his judgment constitute an emergency requiring enactment of such law and, in such latter case, with the concurrence of two-thirds of the members elected to each house of the legislature.

(3) Shall have the power to confer on local governments powers not relating to their property, affairs or government including but not limited to those of local legislation and administration, in addition to those otherwise granted by or pursuant to this article, and to withdraw or restrict such additional powers.

(c) In addition to powers granted in the statute of local governments or in any other law, (i) every local government shall have power to adopt and amend local laws not inconsistent with the provisions of this constitution or any general law relating to its property, affairs or government and, (ii) every local government shall have power to adopt and amend local laws not inconsistent with the provisions of this constitution or any general law relating to the following subjects, whether or not they relate to the property, affairs or government of such local government, except to the extent that the legislature shall restrict the adoption of such a local law relating to other than the property, affairs or government of such local government:

(1) The powers, duties, qualifications, number, mode of selection and removal, terms of office, compensation, hours of work, protection, welfare and safety of its officers and employees, except that cities and towns shall not have such power with respect to members of the legislative body of the county in their capacities as county officers.

(2) In the case of a city, town or village, the membership and composition of its legislative body.

(3) The transaction of its business.

(4) The incurring of its obligations, except that local laws relating to financing by the issuance of evidences of

indebtedness by such local government shall be consistent with laws enacted by the legislature.

(5) The presentation, ascertainment and discharge of claims against it.

(6) The acquisition, care, management and use of its highways, roads, streets, avenues and property.

(7) The acquisition of its transit facilities and the ownership and operation thereof.

(8) The levy, collection and administration of local taxes authorized by the legislature and of assessments for local improvements, consistent with laws enacted by the legislature.

(9) The wages or salaries, the hours of work or labor, and the protection, welfare and safety of persons employed by any contractor or subcontractor performing work, labor or services for it.

(10) The government, protection, order, conduct, safety, health and well-being of persons or property therein.

(d) Except in the case of a transfer of functions under an alternative form of county government, a local government shall not have power to adopt local laws which impair the powers of any other local government.

(e) The rights and powers of local governments specified in this section insofar as applicable to any county within the city of New York shall be vested in such city. Adopted by the people Nov. 5, 1963, eff. Jan. 1, 1964.

§ 3. Existing laws to remain applicable; construction; definitions

(a) Except as expressly provided, nothing in this article shall restrict or impair any power of the legislature in relation to:

(1) The maintenance, support or administration of the public school system, as required or provided by article XI of this constitution, or any retirement system pertaining to such public school system,

(2) The courts as required or provided by article VI of this constitution, and

(3) Matters other than the property, affairs or government of a local government.

(b) The provisions of this article shall not affect any existing valid provisions of acts of the legislature or of local legislation and such provisions shall continue in force until repealed, amended, modified or superseded in accordance with the provisions of this constitution.

(c) Rights, powers, privileges and immunities granted to local governments by this article shall be liberally construed.

(d) Whenever used in this article the following terms shall mean or include:

(1) "General law." A law which in terms and in effect applies alike to all counties, all counties other than those wholly included within a city, all cities, all towns or all villages.

(2) "Local government." A county, city, town or village.

(3) "People." Persons entitled to vote as provided in section one of article two of this constitution.

(4) "Special law." A law which in terms and in effect applies to one or more, but not all, counties, counties other than those wholly included within a city, cities, towns or villages. Adopted by the people Nov. 5, 1963, eff. Jan. 1, 1964.

**Chapter 278 Laws of New York 1958**
**Suffolk County Charter**

§ 201. The board of supervisors; general powers. The supervisors of the several towns of the county, when lawfully convened, shall constitute the board of supervisors of the county. It shall be the legislative and policy determining body of the county and shall, except as otherwise expressly provided in this charter, have and exercise all the powers and duties of the county together with all the powers and duties which now are, or may hereafter be,

conferred or imposed on boards of supervisors by all laws applicable to the county not inconsistent with this charter. The board of supervisors shall also have such other powers and duties as are provided by this charter.

§ 203. Voting; quorum. Each supervisor shall have one vote. A majority of the whole number of the members of the board shall constitute a quorum. Except as otherwise provided by law, local laws and resolutions shall be adopted by a vote of not less than a majority of the total membership of the board. In case of a tie vote on any matter at any meeting of the board of supervisors the county executive shall have a casting vote, provided, however, that he shall not have a vote as to any local law or resolution which provides a new form of government, for the county or changes the voting strength of the supervisors, or which changes the location of the county seat.

§ 2303. Modification after adoption. This act provides an alternative form of county government for the county of Suffolk in accordance with section two of article nine of the constitution of this state. Subject to and in accordance with the provisions and requirements of section one and section two of article nine of the constitution of this state, the provisions of this act and the form of county government provided by this act may be supplemented and/or modified by adding thereto, at any time, any provision or provisions which might have been adopted originally herein or by deleting or changing at any time any provision or provisions herein contained or hereafter duly added or modified herein, so as to leave this act in a modified form which could have been adopted originally, and the provisions of this act and the form of county government provided herein as thus modified shall, from and after the time it becomes effective, have the force and effect of, and be deemed to be, an alternative form of county government for the county of Suffolk, and shall continue to be known as and may be cited as "The Suffolk County Charter."

**Resolution No. 590—1966, Adopting Local Law No. Year 1966, County of Suffolk, New York**

WHEREAS, there was duly presented and introduced to this Board of Supervisors at a regular meeting held on August 8, 1966, a proposed local law entitled, "A LOCAL LAW AMENDING THE SUFFOLK COUNTY CHARTER BY CREATING THE POSITION OF ADDITIONAL REPRESENTATIVES UPON THE BOARD OF SUPERVISORS FROM THE MORE POPULATED TOWNS AND PROVIDING FOR CALCULATING THE VOTE TO WHICH EACH TOWN'S REPRESENTATIVES SHALL BE ENTITLED UPON SUCH BOARD", and said Local Law in final form is the same as when presented and introduced; now, therefore, be it

RESOLVED, that said Local Law be enacted in form as follows:

LOCAL LAW NO. —YEAR 1966, COUNTY OF SUFFOLK, NEW YORK.

A LOCAL LAW AMENDING THE SUFFOLK COUNTY CHARTER BY CREATING THE POSITION OF ADDITIONAL REPRESENTATIVES UPON THE BOARD OF SUPERVISORS FROM THE MORE POPULATED TOWNS AND PROVIDING FOR CALCULATING THE VOTE TO WHICH EACH TOWN'S REPRESENTATIVES SHALL BE ENTITLED UPON SUCH BOARD.

BE IT ENACTED BY THE BOARD OF SUPERVISORS OF SUFFOLK COUNTY, AS FOLLOWS:

Section 1. Section 203 of The Suffolk County Charter is hereby amended by deleting all of the text thereof and substituting therefor the following language:

Section 203. Voting; quorum. (1) The Board of Supervisors shall consist of the supervisor of each town and additional representatives from such towns as are entitled thereto. A majority of the whole number of the votes of the members of the board shall constitute a quorum. Except as otherwise provided herein, local laws and resolutions shall be adopted by a vote of not less than a majority of the total voting strength of the board. In case of a tie

vote on any matter at any meeting of the board of supervisors the county executive shall have a casting vote, provided, however, that he shall not have a vote as to any local law or resolution which provides a new form of government for the county or changes the voting strength of the supervisors or which changes the location of the county seat.

(2) The supervisor and additional representatives, if any, of each town shall cast at meetings of the Board of Supervisors, in the aggregate, a number of votes equal to the quotient, to the nearest whole number, obtained by dividing by two thousand five hundred the number of inhabitants, excluding aliens, of the town from which they were elected, as determined by the last decennial federal census; provided that no supervisor or additional representative shall have less than one vote; and provided, further, that each town having a population, as determined by the last decennial federal census, of more than one hundred thousand persons, shall have one additional representative upon the Board of Supervisors for each additional one hundred thousand inhabitants, or fraction thereof, and, in the case of such towns, the supervisor and the additional representatives shall divide equally the votes to which said town is entitled; and provided further that in the event such votes cannot be equally divided between the supervisor and additional representatives, the supervisor shall be entitled to cast the extra votes.

(3) The assignment of votes among the members of the Board of Supervisors shall be readjusted within sixty days after the public announcement of the enumeration of the inhabitants of the county in each decennial federal census. The county clerk shall make the calculations required by this section and file the same with the Board of Supervisors, and thereupon each supervisor and additional representative shall be entitled to cast the votes assigned to him by such calculation and not otherwise. The action of the county clerk in this respect shall be deemed to be a ministerial act.

(4) The term of each additional representative created hereunder shall begin on the first day of January next succeeding the election at which they were elected and they shall hold their respective offices for two years. A vacancy in the office of such additional representative shall be filled by the town board of the town in which the vacancy exists for the unexpired term. Such additional representative shall have all of the qualifications for office required of town supervisors.

Section 2. This local law shall take effect January 1, 1968 upon approval by the qualified electors of Suffolk County at the November 8, 1966 general election; provided, however, that the positions of additional representatives to be created hereunder shall be filed by the voters of the towns entitled thereto at the November, 1967 general election.

Section 3. This local law is enacted pursuant to the orders and decisions of the United States District Court for the Eastern District of New York.

Said orders and decisions are premised upon the applicability of federal judicial jurisdiction over county forms of government in New York State and further premised upon the applicability of the equal protection clause of the New York and United States Constitutions to county forms of government in New York State. Notwithstanding the provisions of Section 2 hereof, this local law shall be deemed rescinded, repealed and annulled upon the date of any decision or order of the United States Supreme Court which overrules or invalidates said order or orders or holds inapplicable one or more of the premises upon which said order or orders were based.

Dated: August 22, 1966

APPROVED:

By .....
County Executive of Suffolk County

**New York Municipal Home Rule Law**
**(Consolidated Laws, Chapter 36-a)**

§ 10. *General powers of local governments to adopt and amend local laws*

1. In addition to powers granted in the constitution, the statute of local governments or in any other law,

(i) every local government shall have power to adopt and amend local laws not inconsistent with the provisions of the constitution or not inconsistent with any general law relating to its property, affairs or government and,

(ii) every local government, as provided in this chapter, shall have power to adopt and amend local laws not inconsistent with the provisions of the constitution or not inconsistent with any general law, relating to the following subjects, whether or not they relate to the property, affairs or government of such local government, except to the extent that the legislature shall restrict the adoption of such a local law relating to other than the property, affairs or government of such local government:

a. A county, city, town or village:

(1) The powers, duties, qualifications, number, mode of selection and removal, terms of office, compensation, hours of work, protection, welfare and safety of its officers and employees, except that cities and towns shall not have such power with respect to members of the legislative body of the county in their capacities as county officers. This provision shall include but not be limited to the creation or discontinuance of departments of its government and the prescription or modification of their powers and duties.

(2) In the case of a city, town or village, the membership and composition of its legislative body.

(3) The transaction of its business.

(4) The incurring of its obligations, except that local laws relating to financing by the issuance of evidences of indebtedness by such local government shall be consistent with laws enacted by the legislature.

(5) The presentation, ascertainment, disposition and discharge of claims against it.

(6) The acquisition, care, management and use of its highways, roads, streets, avenues and property.

(7) The acquisition of its transit facilities and the ownership and operation thereof.

(8) The levy and administration of local taxes authorized by the legislature and of assessments for local improvements, which in the case of county, town or village local laws relating to local non-property taxes shall be consistent with laws enacted by the legislature.

(9) The collection of local taxes authorized by the legislature and of assessments for local improvements, which in the case of county, town or village local laws shall be consistent with laws enacted by the legislature.

(9-a) The fixing, levy, collection and administration of local government rentals, charges, rates or fees, penalties and rates of interest thereon, liens on local property in connection therewith and charges thereon.

(10) The wages or salaries, the hours of work or labor, and the protection, welfare and safety of persons employed by any contractor or subcontractor performing work, labor or services for it.

(11) The government, protection, order, conduct, safety, health and well-being of persons or property therein. This provision shall include but not be limited to the power to adopt local laws providing for the regulation or licensing of occupations or businesses provided, however, that:

(a) The exercise of such power by a town shall relate only to the area thereof outside the village or villages therein.

(b) Except in a case where and to the extent that a county is specifically authorized to regulate or license an occupation or business, the exercise of such power by a county shall relate only to the area thereof outside any city, village or area of any town outside the village or villages therein during such time as such city, village or town is regulating or licensing the occupation or business in question.

(12) The powers granted to it in the statute of local governments.

b. A county:

(1) The adoption, amendment or repeal of a county charter pursuant to article four of this chapter in addition to its powers under this article.

(2) The establishment of a county tax department headed by a director appointed by and serving at the pleasure of the board of supervisors, which director shall, subject to authorization of such board (a) employ necessary employees, (b) advise with and assist all assessors, collectors and receivers of taxes of the various tax districts within the county in the discharge of their duties, (c) assist in the preparation of equalization rates with the various tax districts within the county, (d) assist in the disposition and sale of real property acquired by the county as the result of enforcement of unpaid taxes, and (e) perform such other duties as shall be prescribed by such board.

(3) The assignment to and the performance by the chairman of the board of supervisors of specified administrative functions, powers and duties on behalf of such board, with provision for periodic reports to such board, and with further provision that such local law shall not divest such board of such functions, powers and duties.

(4) The creation of an office of administrative assistant to the chairman of the board of supervisors and assignment to and performance by such an assistant, under the general supervision of such chairman, of specified administrative

functions, powers and duties on behalf of such board, with provision for periodic reports to such board, and with further provision that such local law shall not divest such board of such functions, powers and duties.

(5) The compensation to be paid from county funds to public officers or employees who are not officers or employees of the county other than members of the judiciary.

(6) The method for the correction of manifest clerical or other errors or omissions in assessment rolls or returns thereof as authorized by sections five hundred fifty-four and five hundred fifty-six of the real property tax law, subject to review by the courts as provided by law.

(7) The protection or preservation of game, game birds, fish or shell fish on county-owned lands.

(8) The control of floods or the conservation of soil.

(9) The reforestation of lands owned by the county.

(10) The eradication or prevention of bovine tuberculosis or other infectious or communicable diseases affecting animals or fowls.

(11) The regulation or prohibition of the dumping of garbage, rubbish, ashes or other waste material in or adjacent to creeks or streams in watershed areas improved under any flood control or soil erosion program.

* * *

2. Every local government also shall have power to adopt and amend local laws where and to the extent that its legislative body has power to act by ordinance, resolution, rule or regulation.

3. a. A grant of a specific power by this section to one or more local governments shall not operate to restrict the meaning of a general grant of power by this section to the same or any other local government or to exclude other powers comprehended in such general grant.

b. The enumeration of powers in this section is not intended to imply that any of such powers is not included within the power of a local government to adopt and amend

local laws in relation to its property, affairs and government.

4. In the exercise of its powers to adopt and amend local laws, the legislative body of a local government shall have power:

(a) To delegate to any officer or agency of such local government the power to adopt resolutions or to promulgate rules and regulations for carrying into effect or fully administering the provisions of any local law.

(b) To provide for the enforcement of local laws by legal or equitable proceedings which are or may be provided or authorized by law, to prescribe that violations thereof shall constitute misdemeanors, offenses or infractions and to provide for the punishment of violations thereof by civil penalty, fine, forfeiture or imprisonment, or by two or more of such punishments, provided, however, that a local law adopted pursuant to subdivision two of this section shall provide only for such enforcement or punishment as could be prescribed if the action of the legislative body were taken by ordinance, resolution, rule or regulation, as the case may be.

(c) To enact as local law the provisions of any existing charter, general law or special law, theretofore enacted, conferring a right, power or authority, or imposing a duty or obligation, on such local government, whether or not the same relate to its property, affairs or government. Any such provision of law so re-enacted shall thereafter be subject to be superseded by local law only to the same extent and in the same manner as if the same had not been so re-enacted.

(d) In establishing the office of the head of a department of its government, to provide that such an office shall be in the unclassified service of the civil service and, in establishing the offices of one or more deputies to the head of a department of its government with power to act generally for and in place of their principals, to provide that the

positions of such deputies shall be in the exempt class of the civil service.

5. Except in the case of a transfer of functions pursuant to the constitution or under an alternative form of county government, a local government shall not have power to adopt local laws which impair the powers of any other public corporation.

* * * *

§ 33. *Power to adopt, amend and repeal county charters*

1. Subject to restrictions in the constitution, in this article or in any other applicable law, the board of supervisors of any county as defined in section thirty-two of this article and including but not limited to a county which has heretofore adopted a charter enacted by the legislature shall have power to prepare, adopt, amend or repeal a county charter.

2. A county charter shall set forth the structure of the county government and the manner in which it is to function. Such charter may provide for the appointment of any county officers or their selection by any method of nomination and election, provided that there shall be an elective board of supervisors, the members of which shall be deemed county officers, which shall determine county policies and exercise such other functions as may be assigned to it.

3. Such a county charter shall provide for:

a. The exercise by the board of supervisors of the powers of local legislation and appropriation of the county.

b. The agencies or officers responsible for the performance of the functions, powers and duties of the county and of any agencies or officers thereof and the manner of election or appointment, terms of office, if any, and removal of such officers.

c. The equalization of real property taxes consistent with standards prescribed by the legislature.

4. Such a county charter may:

a. Assign executive or administrative functions, powers and duties to elective or appointive officers.

b. Empower an executive officer elected on a county-wide basis to veto actions of the board of supervisors, with provision for overriding of such vetoes by a specified percentage or percentages of votes of such board.

c. In accordance with subdivision (h) of section one of article nine of the constitution, provide for the transfer of one or more functions or duties of the county or of the cities, towns, villages, districts or other units of government wholly contained in such county to each other or when authorized by the legislature to the state, or for the abolition of one or more offices, departments or agencies of such units of government when all of their functions or duties are so transferred.

d. Provide for an administrative code which shall set forth the details of administration of the county government in harmony with the provisions of the county charter and may contain revisions, simplifications, consolidations, codifications and restatements of special laws, local laws, ordinances, resolutions, rules and regulations consistent with the county charter.

e. Provide for the termination of the terms of office of existing officers.

5. The board of supervisors by resolution may provide that a draft of a proposed county charter, or of an amendment or repeal thereof, shall be prepared under its supervision, the supervision of an officer or committee of the board, or by a charter commission appointed by or pursuant to such resolution. The county attorney or other legal advisor shall provide such assistance and cooperation as shall be required of him and for such purpose shall have power to employ or retain special counsel and technical advisors and assistants within appropriations made available therefor.

6. Where a petition is filed with the clerk of the board of supervisors signed by electors of the county equal in number to at least ten per centum of the whole number of votes cast in the county for governor at the last guber-

natorial election, asking that a charter commission be created by the board of supervisors and be composed and appointed as provided by the board of supervisors, and where the board of supervisors does not on its own motion create and appoint or provide for the appointment of such a charter commission within three months after such filing, the board of supervisors shall cause a proposition to be submitted to the electors of the county at the next general election occurring not less than five months after such filing, on the question of whether such a charter commission should be so established and appointed. The provisions of subdivision eight of this section shall apply to the preparation of the form of such proposition and its submission at such general election. If such proposition receives a majority of the votes cast thereon in the county at such general election, the board of supervisors within two months after such general election shall provide for the creation of such commission and its members shall be appointed within such two-month period. The provisions of subdivision five hereof, so far as applicable, shall apply to such charter commission.

7. A charter law

(a) providing a county charter, or

(b) proposing an amendment or repeal of one or more provisions thereof which would have the effect of transferring a function or duty of the county, or of a city, town, village, district or other unit of local government wholly contained in the county, shall conform to and be subject to consideration by the board of supervisors in accordance with the provisions of this chapter generally applicable to the form of and action on proposed local laws by the board of supervisors. If a county charter, or a charter law as described in this subdivision, is adopted by the board of supervisors, it shall not become operative unless and until it is approved at a general election held in the county by receiving a majority of the total votes cast thereon (a) in the area of the county outside of cities and (b) in the area

of the cities of the county, if any, considered as one unit, and if it provides for the transfer of any function or duty to or from any village or for the abolition of any office, department, agency or unit of government of a village wholly contained in the county, it shall not take effect unless it shall also receive a majority of all the votes cast thereon in all the villages so affected considered as one unit. Such a county charter or charter law shall provide for its submission to the electors of the county at the next general election occurring not less than sixty days after the adoption thereof by the board of supervisors. Such a county charter or charter law may provide for the separate submission to the electors at such election of one or more variations of the provisions of such county charter. Any such variation may include, but shall not be limited to, proposed transfers of functions of local government to other units of local government or a class or classes thereof.

8. The form of each proposition submitted to the electors of a county pursuant hereto shall be prepared by the clerk of the board of supervisors with the advice of the county attorney or other principal legal advisor. They also shall prepare a brief abstract of the county charter or charter law so submitted. The form and abstract shall be transmitted to the board of elections of the county. The board of elections, at least twenty days before the election, shall send two or more copies thereof to the clerk of each city, town and village in the county to be made a public record in his office and shall cause a sufficient number of copies to be printed and made available to the electors at the time of registration or otherwise. In addition, such board of elections shall cause a sufficient number of copies to be delivered with the other election supplies and distributed to the electors at the election. The board of elections shall cause each such proposition to be submitted to the electors of the county in the manner provided in the election law and, so far as applicable, in subdivision two of section one hundred two of the county law. Expenses incurred in connection with the submission of any proposition under this article shall be a charge against the county.

9. If two or more propositions having conflicting provisions receive the majorities required for adoption under this section at the same election, the proposition involved in each such conflict which receives the largest affirmative vote shall prevail to the extent of such conflict; but in all other respects such proposition shall be deemed adopted. Where a proposition submitted to the electors of a county under the provisions of this article receives the majority or majorities required for adoption, it shall become operative as prescribed therein, subject to any conditions prescribed therein.

§ 34. *Limitations and restrictions*

1. The legislature hereby imposes the following limitations on the powers of counties to prepare, adopt and amend county charters and charter laws.

2. Except in accordance with or consistent with laws enacted by the legislature, a county charter or charter law shall not contain provisions relating to:

a. Taxation of the property of the state or of any of its agencies;

b. Exemptions from taxation;

c. Assistance by the state to any unit of local government;

d. The division of the county into two or more counties or the creation, enlargement, diminution or abolition of any city, town, village or school district;

e. The compensation of members of the judiciary fixed by the legislature;

f. The composition, functions, powers, duties or jurisdiction of a court or of the officers thereof, except that functions, powers or duties assigned to units of local government or agencies or officers thereof outside the judicial system may be transferred to other units of local government, agencies or officers as authorized by this article.

3. Except in accordance with provisions of this chapter or with other laws enacted by the legislature, a county charter or charter law shall not supersede any general or special law enacted by the legislature:

a. Which relates to the imposition, judicial review or distribution of the proceeds of taxes or benefit assessments;

b. Insofar as it relates to the educational system in the county or to school districts therein, except that functions, powers or duties assigned to units of local government or to agencies or officers thereof outside the educational system may be transferred to other units of local government, agencies or officers as authorized by this article;

c. Which requires that specified functions of government be performed by or financed by units of local government, except that any of such functions may be transferred to other units of local government, agencies or officers as authorized by this article;

d. Insofar as it relates to a function, power or duty of the state or of any officer or agency thereof which is financed directly by the state;

e. Insofar as it relates to the commencement or prosecution of actions or proceedings against the county;

f. Insofar as it relates to a public benefit corporation;

g. In this chapter or in the civil service law, condemnation law, conservation law, election law, executive law, judiciary law, labor law, local finance law, multiple dwelling law, multiple residence law, public authorities law, public housing law, public service law, railroad law, retirement and social security law, state finance law, volunteer firemen's benefit law, or workmen's compensation law.

4. After the adoption of a county charter by a county, no law enacted by the legislature pursuant to paragraph two of subdivision (h) of section one of article nine of the constitution which does not apply alike to all counties outside the city of New York, and no charter law or local law, which in its application to such county abolishes or creates an elective county office, changes the voting or veto power

of or the method of removing an elective county officer during his term of office, abolishes, curtails or transfers to another county officer or agency any power of an elective county officer, or changes the form or composition of the board of supervisors of such county, shall become effective in such county until at least sixty days after its final enactment. If (a) the legislature in enacting such a law shall provide that it shall be submitted to the qualified electors of the county for their approval, or (b) the board of supervisors on its own motion, in the manner provided by subdivision four of section one hundred one of the county law, shall provide that such a charter law or local law adopted by it shall be submitted to the qualified electors of the county for their approval, or (c) within such sixty days electors of the county, duly registered to vote therein either for the last preceding or the next following general election, in number equal to at least five per centum of the total number of votes cast in the county for governor at the last gubernatorial election, shall file a petition with the county clerk or corresponding officer of the county protesting against such law, charter law or local law, it shall become effective in such county only if approved by the electors thereof at the next ensuing general election held at least sixty days thereafter, subject to the conditions provided in subdivision seven of section thirty-three of this chapter for the adoption of a county charter when voted on by the electors of a county.

§ 35. *Legislative intent; construction*

1. It is the intention of the legislature by this county charter law to provide for carrying into effect the provisions of paragraph (h) of subdivision one of article nine of the constitution and, pursuant to the direction contained therein, to empower counties to prepare, adopt and amend county charters by local legislative action, subject to limitations imposed herein.

2. It is not the intention of the legislature hereby to (a) abolish or curtail any powers or rights heretofore con-

ferred upon or delegated to a county or counties or to any of the units of government therein or to any board, commission, body or officer thereof, or (b) adversely to affect the power of a county to adopt, amend or repeal county charters, county laws or local laws pursuant to any other authorization of the legislature, unless a contrary intention is clearly manifested from the express provisions of this county charter law or by necessary intendment therefrom.

3. This county charter law shall be construed liberally. The powers herein granted shall be in addition to any other powers granted to counties by any other provisions of general or special laws, including but not limited to charters, administrative codes, special acts or local laws. A permissive procedure authorized hereby shall not be deemed to be exclusive or to prohibit the use of any other procedure authorized by any general or special act of the legislature, charter, administrative code or local law lawfully adopted and still in effect.

4. All existing state, county, local and other laws or enactments, including charters, administrative codes and special acts having the force of law shall continue in force until lawfully amended, modified, superseded or repealed.

5. If any provision of the county charter law is not clear or requires elaboration in its application to the county, the board of supervisors may interpret such provision in a local law not inconsistent with the provisions hereof. Where any question arises concerning the transition to a charter law which is not provided for herein, the board of supervisors may provide for such transition by a local law not inconsistent with the provisions hereof.

6. If any provision of this county charter law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof but shall be confined in its operation to the particular provision directly involved in the controversy in which such judgment is rendered.